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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 878.

THE CENTRAL RAILROAD CO[illegible]W JERSEY, THE PHILADELPHIA & READING RAILROAD COMPANY ET AL., APPELLANTS,

vs.

ALFRED MILLS AND JOHN H. LIDGERWOOD, SURVIVING EXECUTORS OF STEPHEN VAIL, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED JULY 14, 1884.

SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 In the Circuit Court of the United States for the District of New Jersey. In Equity.

ALFRED MILLS and JOHN H. LIDGERWOOD, Surviving Executors of Stephen Vail, Deceased, Complainants,

and

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, THE PHILADELPHIA AND READING RAILROAD COMPANY, and others, Defendants.

To the honorable the judges of said court:

The petition of The Central Railroad Company of New Jersey, The Philadelphia & Reading Railroad Company, Franklin B. Gowen, Joshua B. Lippincott, Henry Lewis, Isaiah V. Williamson, Edward C. Knight, Joseph B. Altemus, Henry S. Little, John Kean, and Robert Garrett, the defendants in the above suit, respectfully represent:

That they desire to appeal to the Supreme Court of the United States from the decree rendered in the said suit remanding the same
2 to the court of chancery of New Jersey, and they pray that the said appeal may be allowed.

JAMES E. GOWEN &
A. G. RICHEY,
For Petitioners.

(Endorsed:) Circuit court of the United States, district of New Jersey. Mills and Lidgerwood, executors of Vail, dec'd, *vs.* The Central Railroad Co. of New Jersey & others. Petition for allowance to appeal to the Supreme Court of the United States. Filed May 8, 1884. S. D. Oliphant, clerk. The within appeal allowed. John T. Nixon, J. Dated May 8, 1884.

3 In the Circuit Court of the United States for the District of New Jersey. In Equity.

ALFRED MILLS and JOHN H. LIDGERWOOD, Surviving Executors of Stephen Vail, Deceased, Complainants,

and

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, THE PHILADELPHIA AND READING RAILROAD COMPANY, and others, Defendants.

Know all men by these presents, that we, The Philadelphia and Reading Railroad Company, and George DeB. Keim, James E. Gowen, George R. Kaercher, F. B. Gowen, E. C. Knight, and I. V. Williamson, are held and firmly bound unto Alfred Mills and John H. Lidgerwood, defendants above named, in the sum of five hundred dollars, to be paid to the said obligees, their heirs, executors, and administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our successors, heirs, executors, and administrators, firmly by these presents.

4 Sealed with our seals. Dated this 12th day of May, anno Domini one thousand eight hundred and eighty-four (1884).

Whereas the above-named The Philadelphia and Reading Railroad Company, F. B. Gowen, E. C. Knight, I. V. Williamson, and others, defendants in the above suit, have appealed to the Supreme Court of the United States from the decree rendered in the above suit by the circuit court of the United States for the district of New Jersey, remanding the same to the court of chancery of New Jersey:

Now the condition of this obligation is such that if the said defendants shall prosecute their appeal with effect, and pay all damages and costs if they shall fail to make their appeal good, then this obligation shall be void; otherwise to be and remain in full force and virtue.

GEORGE DEB. KEIM, [L. S.]
President.

Attest: A. FOSTER, *Sec'ty.*

5

GEORGE DEB. KEIM. [L. S.]
JAMES E. GOWEN. [L. S.]
GEO. R. KAERCHER. [L. S.]
F. B. GOWEN. [L. S.]
E. C. KNIGHT. [L. S.]
I. V. WILLIAMSON. [L. S.]

Sealed and delivered in the presence of—
A. FOSTER.
B. F. HORAN.

(Endorsed:) United States circuit court, district of New Jersey. In equity. Mills *et al.*, executors of Vail, *vs.* The Central R. R. Co. of New Jersey. Bond. Approved May 12, 1884. Jno. T. Nixon, J. Filed May 12, 1884. S. D. Oliphant, clerk.

6 In the Circuit Court of the United States for the District of New Jersey. In Equity.

Between ALFRED MILLS and JOHN H. LIDGERWOOD, Surviving Executors of Stephen Vail, Deceased, Complainants,
and
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, THE PHILADELPHIA AND READING RAILROAD COMPANY, and others, Defendants.

To Alfred Mills and John H. Lidgerwood, the plaintiffs above named:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, on the twelfth day of June next, pursuant to an appeal taken by the Central Railroad Company of New Jersey and others, defendants as above, from the decree of the circuit court in the above cause, remanding the same to the court of chancery of New Jersey, to show cause, if any there be, why the said decree should not be corrected, and why speedy justice should not be decreed to the parties in that behalf.

6½ Witness the Honorable John T. Nixon, one of the judges of the circuit court of the United States for the district of New

Jersey, this twelfth day of May, in the year of our Lord eighteen hundred and eighty-four.

JNO. T. NIXON,
District Judge.

6¾ [Endorsed:] In the circuit court of the United States for the district of New Jersey. In equity. Mills *et al.*, executors of Vail, *vs.* The Central R. R. Co. of New Jersey. Citation to plaintiffs. Due and legal service of a copy of the within citation is hereby acknowledged. May 16, 1884. Henry C. Pitney, sol. of comp'ts.

7 *Transcript from Court of Chancery of New Jersey. Filed in United States Circuit Court, District of New Jersey, February* 18, 1884.

To the Hon. Theodore Runyon, chancellor of the State of New Jersey:

Humbly complaining show unto your honor your orators, Alfred Mills and John H. Lidgerwood, surviving executors of the last will and testament of Stephen Vail, late of the county of Morris and State aforesaid, deceased—

1. That the said deceased departed this life on or about the twelfth day of July, 1864, having first duly made and published his last will and testament, consisting of a principal will and seven several codicils thereto, in and by which he did constitute and appoint your orators and Jacob Vanatta, Esq., since deceased, executors of and trustees under the same.

2. That your orators and said Jacob Vanatta, since deceased, did on or about the twenty-second day of July, 1864, prove the said will before the surrogate of the county of Morris, and letters testamentary thereon were thereupon duly issued to your orators and said Jacob Vanatta, by the said surrogate, and your orators and said Jacob Vanatta took upon themselves the burthen of the execution of said will, and became and were possessed of all and singular the personal estate of said Stephen Vail, deceased.

3. That among the assets of said estate which came to the possession of your orators were fourteen hundred and sixty shares of the capital stock of the Central Railroad Company of New Jer-
8 sey, a corporation of this State, the organization and history of which will be hereafter stated, of which corporation said testator was one of the original corporators, and was for many years its president, having been one of the original projectors of the enterprise, to carry out of which it was organized.

4. That the portions of said will which relate to and affect said shares of stock are as follows:

"(Seventh.) I give and bequeath to my executors, and to the survivors and survivor of them, the sum of thirty thousand dollars in the capital stock of the Central Railroad Company of New Jersey, in trust, for the following uses and purposes, to wit: To pay the dividends made on said stock in equal shares to my three granddaughters, Harriet B. V. Cutler, Jane E. Cutler, and Sarah C. Cutler;

but until my said granddaughters shall severally arrive at the age of twenty-five years, to get married with the consent and approval of my executors, or the survivors or survivor of them, my will and direction are that the said trustees and the survivors and survivor of them shall use and apply so much of the said dividends towards the support and maintenance of my said three granddaughters respectively, as they, the said trustees or the survivors or survivor of them, shall deem necessary and proper, and the residue of each one's share of said dividends, if any, to be safe and properly invested for the use of such granddaughters respectively, as such surplus shall belong to; and after my said granddaughters shall respectively attain the age of twenty-five years, or get married with the consent of my executors, or the survivors or survivor of them, then as often as the said company shall pay a dividend upon said stock to pay the same, *to pay the same*, to my three said granddaughters equally upon their own separate receipts, and upon no other voucher, and for their own separate use during their natural lives respectively, and after the death of any one of them, to appropriate the dividends on one-third of the said last-mentioned stock, or the interest arising from the proceeds of the sale of one-
9 third thereof, to the support and education of the child or children of such deceased granddaughter until he, she, or they shall respectively arrive at the age of twenty-one years, and then to divide the principal sum equally between them, if more than one; and in case any one of my said granddaughters shall die without leaving any lawful child or grandchild her surviving, then, and in that case, such deceased granddaughter's share of this bequest shall go to her surviving sisters equally, and if there be only one surviving sister and no living child or grandchild of either of my deceased granddaughters, then the sole surviving granddaughter and her children shall have the whole benefit of the bequest in this section mentioned; and if, in the event that one of my said granddaughters shall die, leaving no lawful child or grandchild her surviving, after the death of another one of my said granddaughters, who shall have left a child or children, grandchild or grandchildren, her surviving, then, and in that event, such child or children, grandchild or grandchildren, of my deceased granddaughter shall take and have the share which their, and if only one his or her, mother would have taken had she been living; but whatever any of my granddaughters or their children shall take by virtue of this bequest, upon the death, without leaving children, of any one of my said granddaughters, shall only be taken and had according to and in conformity with the uses and trust in this section hereinbefore declared, my intent being that no one of my said granddaughters shall ever have or dispose of any of the principal of this bequest, and that none of their children shall have the absolute ownership of any of the said principal dividends or interest, before he or she attains the age of twenty-one years. And if it shall so happen that every one of my said granddaughters in this section mentioned shall die, without leaving any lawful child or grandchild her surviving, then, and in that event, when the last survivor of my said three

granddaughters shall die, and there shall then be no child or grandchild of any one of them then living, then, and in that event, the whole of said thirty thousand dollars shall go into my general estate, to be disposed of as hereinafter directed. And I do fully authorize and empower the trustees hereinbefore named, and the survivors and survivor of them, and their lawful successors or successor, whenever he or they shall deem it expedient so to do, to sell the stock in this section mentioned, and to invest the proceeds thereof in other stock, or loan out the same upon security of bonds and mortgages, but the proceeds of such sale, if made, shall be used and disposed of as hereinbefore mentioned and directed, for the use and disposition of the said railroad stock.

"(Eleventh.) I give and bequeath unto my executors, and to the survivors and survivor of them, the sum of twenty-five thousand dollars in trust, for the uses and purposes following; that is to say: To invest the same in stocks, or to loan it securely on securities of bonds and mortgages of real estate, and to pay the dividends and interest thereof half yearly to my grandson, Isaac A. Canfield, during his natural life, and after his death to appropriate the dividends and interest thereof to the support and education of the children of said Isaac, until they shall severally arrive at the age of twenty-one years, and then to divide and pay to each one as he or she severally arrives at the age last mentioned his or her equal share of the principal; and if any of said children shall die before attaining the age of twenty-one years, leaving no lawful child him or her surviving, the surviving children of said Isaac to take the share of the one dying without child or children, as aforesaid; but if any one of the children of said Isaac shall die, leaving any lawful child or children him or her surviving, the share which would have gone to said child had he or she been living shall go to his or her children in equal shares.

"(Seventeenth.) I give and bequeath unto my executors, and to the survivors or survivor, successors and successor of them, twenty thousand dollars in the capital stock of the Central Railroad Company of New Jersey in trust, and for the uses and purposes following, that is to say: For the use and benefit of the three sons of my deceased son, Alfred Vail, hereinbefore named, equally, and their children. The terms and limitations of the last-mentioned trusts, the rights, powers, and duties of the trustees, and the rights of the *cestui que* trusts shall be the same, *mutato nomine*, in every respect, as are expressed in the seventh section of this will, in respect to my three granddaughters, the daughters of my daughter Sarah, except that I do not desire that my said last-mentioned grandsons, or any of them, shall be required to ask or obtain the consent or approval of my executors, or any of them, to any marriage they may contract or propose to contract.

"(Twenty-third.) All the remainder and residue of my estate not hereinbefore disposed of I order and direct shall be divided into four equal shares or parts, and one of said shares or fourth parts I give and bequeath to my son, George Vail, for his own use absolutely and forever; but if my said son George shall die in my

lifetime, then everything given to him in and by this will, in any of its parts, shall be taken and considered as given to my executors and the survivors, survivor, successors and successor of them in trust for the use and benefit of the two daughters of my son, George Vail, hereinbefore named, equally, and for the use of their children, and the terms, limitations, provisions, and conditions of said trust last mentioned, and the uses last mentioned, shall be the same in every respect, as are expressed and defined in the sixteenth section of this will, in respect to the twenty thousand dollars bequeathed in and by the said last-mentioned section to my executors for the use of George Vail's daughters and their children.

"Another equal one-fourth part of the residue of my estate I give and bequeath to my executors and to the survivors, survivor, successors, and successor of them, in trust, for the use and benefit of the three sons of my son, Alfred Vail, hereinbefore named, equally, and for the use of their children, and the terms, conditions, limitations, and provisions of this last-mentioned trust and uses shall be the same in every respect as are mentioned, defined, and re-
12 ferred to in the seventeenth section of this will, in respect to the twenty thousand dollars in the stock of the Central Railroad Company of New Jersey 'therein and thereby given to my executors, for the use of the sons of my son Alfred, and their children.'

"Another equal one-fourth part of the residue of my estate I give and bequeath to my executors, and to the survivors, survivor, successors, and successor of them, in trust, for the use and benefit, equally, of the four children of my daughter, Sarah D. Hurd, viz: Harriet B. V., Jane E., Sarah C., and Augustus Cutler, and their children, respectively, and the terms, conditions, limitations, and provisions of this last-mentioned trust and last-mentioned uses shall be the same, *mutatis mutandis*, as are mentioned, defined, and intended, in and by the seventh section of this will, which bequeaths thirty thousand dollars in the stock of the Central Railroad Company of New Jersey, to my executors for the use of my three granddaughters, in this section named, and their children.

"And the remaining equal one-fourth part of the residue of my estate I give and bequeath to my executors, and to the survivors, survivor, successors, and successor of them, in trust, for the use and benefit of my grandson, Isaac A. Canfield, and his children; and the terms, conditions, limitations, and provisions of this last-mentioned trust of these last-mentioned uses are and shall be the same in every respect as are mentioned, defined, and intended in and by the eleventh section of this will, which bequeaths the sum of twenty-five thousand dollars ($25,000) to my executors, to and for the use of my grandson, Isaac A. Canfield, and his children: Provided, however, That if Sarah L., the sister of the said Isaac A. Canfield, shall at her decease leave any lawful child or grandchild her surviving, then, and in that event, one-fourth part of the equal one-fourth part of the residue of my estate, last hereinbefore bequeathed, for the use of Isaac A. Canfield and his children, shall go to and for the use of

the lineal descendants of the said Sarah L. in the same man-
13 ner as the children of any one of the daughters of my daughter Sarah are hereinbefore allowed to receive the use of what I have hereinbefore bequeathed for their use, but if my said granddaughter, Sarah L., shall leave no lawful child or grandchild her surviving, then the whole of the remaining one-fourth part of the residue of my estate shall go to and for the use of Isaac A. Canfield and his children in manner aforesaid."

Second Codicil.

"(Second.) In the seventh and seventeenth sections or items of my said will I make bequests in trust of the 'capital stock of the Central Railroad Company of New Jersey.' Both of said bequests I now alter by striking out and cancelling in both of them the words 'In the capital stock of the Central Railroad of New Jersey,' so that the seventh section or item shall stand as a bequest of thirty thousand dollars, and the seventeenth section as a bequest of twenty thousand dollars, and the thirty thousand dollars in the one case and the twenty thousand dollars in the other shall be securely invested in good secure dividend-paying stocks, or in bonds secured by mortgages of real estate, and the interest or dividends thence arising shall be paid as the dividends in the said seventh and seventeenth sections are, respectively, directed to be paid, and to and for the same uses and purposes as therein respectively expressed.

"Fourth. The bonds made and issued by railroad companies, which I may own at my decease, are not be sold or transferred, but retained as portions of my estate, satisfactorily invested and held as investments until they shall mature and be paid by the obligors. Nor shall any stocks in the Central Railroad Company of New Jersey, in the Lehigh Valley Railroad Company, or in the Morrison and Essex Railroad Company be sold by my executors, or any of them, but shall be retained as permanent, satisfactory investments of so
14 much of my estate, as long as the trusts in my will, and in the codicils thereto, shall require my executors, or the survivors or survivor of them, to continue my estate invested.

"Fifth. I hereby revoke, annul, and cancel the twenty-third section or item of my will, and in place thereof I bequeath and direct as follows: All the remainder and residue of my estate, not herein-[be]fore disposed of, I give and bequeath to my executors and to the survivors and survivor of them in trust, for the uses and purposes hereinafter mentioned.

"First. To divide the same into four equal shares or parts, and after deducting from one of said fourth parts the sum of twenty-five thousand dollars (which last-mentioned sum I consider the value of certain houses and lots, which I heretofore gave and conveyed to my son, George Vail, one situate in the city of Brooklyn, and the others situate in the city of New York), to safely invest the residue of the said one-fourth part, at interest, in good secure divided-paying stocks, or upon bond or bonds, secured by mortgage or mortgages of unincumbered real estate, and to pay the dividends and in-

terest thence arising, yearly or oftener, and as often as received, to my son George during his natural life, and after his death to pay the interest and dividends to the children of my said son George during their natural lives, respectively, and at the death of the children of my said son George to dispose of the principal, as is directed for the final disposition of the twenty thousand dollars given in trust for the use of my said son George and his children, in and by the third item or section of this codicil.

"Second. Another equal one-fourth part of the said residue I direct my executors to safely invest in good, secure dividend-paying stock, or upon bond or bonds secured by mortgage or mortgages of unincumbered real estate, for the use and benefit of the sons of my deceased son, Alfred Vail, in my said will named, and their children and the terms, conditions, limitations, and provisions of
15 this last-mentioned trust and the uses thereof, shall be the same in every respect as are mentioned and declared in the seventeenth section of my said will, in respect to the twenty thousand dollars therein and thereby given to my executors, for the use of the sons of my said son Alfred.

"Third. Another equal one-fourth part of the said residue I direct to be invested as the other portions of said residue are hereinbefore directed to be invested, and the same shall be held in trust for the use and benefit, equally, of the four children of my daughter, Sarah D. Hurd, viz: Harriet B. V., now the wife of John H. Lidgerwood; Jane E. Cutler, Sarah C. Cutler, and Augustus Cutler, and their children, respectively, and the terms, conditions, limitations, and provisions of this last-mentioned trust and last-mentioned uses, shall be the same, *mutatis mutandis*, as are mentioned, defined, and limited in and by the seventh section or item of my said last will and testament, which, as altered by this codicil, bequeaths thirty thousand dollars to my executors for the use of my three granddaughters last hereinbefore named, and their children.

"Fourth. The remaining equal one-fourth part of said residue, together with the sum of twenty-five thousand dollars deducted from the fourth part of said residue, which is hereinbefore bequeathed to and for the use of my son George and his children, I direct shall be invested, as the other portions of the said residue as hereinbefore directed to be invested for the use and benefit of my grandson, Isaac A. Canfield, and his children, and the terms, conditions, limitations, and provisions of this last-mentioned trust, and the uses thereof, shall be the same in every respect as are mentioned, defined, and intended, in and by the eleventh section of my said last will and testament, which bequeaths the sum of twenty-five thousand dollars to my executors to and for the use of my said grandson, Isaac A. Canfield, and his children: Provided, however, That if Sarah L., the sister of the said Isaac A. Canfield, shall at her decease, leave any lawful child or grandchild her surviving, then, and in that event, the equal one-fourth part of that portion of the residue of my estate which
16 by this codicil, is bequeathed to and for the use of said Isaac and his children, shall go to and for the use of the lineal descendants of my said granddaughter, Sarah L., in the same manner as the

children of any one of the daughters of my daughter Sarah are, in and by the provisions of my said will, allowed to receive the use of what I have hereinbefore bequeathed for their use, but if my said granddaughter, Sarah L. shall leave no lawful child or grandchild of hers her surviving, then the whole of that portion of the residue of my estate, which, by this codicil, is bequeathed to and for the use of my said grandson, Isaac A. Canfield, shall go to and for the use of said Isaac and his children, in manner aforesaid."

Fifth Codicil.

"(Secondly.) I do hereby order and direct my executors in this codicil named, and every of them, to pay out of my estate, when or before they are severally due, every installment owing by me to the Central Railroad Company of New Jersey, on or for any subscription by me to the capital stock of said company, or on or for any stock of said company to which I may be entitled, as one of the stockholders of said company."

5. And your orators further show that the said testator in his lifetime, and shortly before his death, subscribed for two hundred and sixty shares of additional capital stock of said Central Railroad Company, upon which there had been paid by him in his lifetime the sum of $10,400, leaving due on said subscription at the time of his death the sum of $15,600, which sum your orators and said Vanatta, as such executors, in pursuance to the directions of said will, shortly after the death of said testator, and as the same became payable by the terms of said subscription, paid to said railroad company out of the funds of said estate, and received therefor a certificate for the same.

17 6. That afterwards, and more than ten years since, your orators and said Vanatta, as such executors, became the owners of three hundred and fifty-eight other shares of said stock, so that your orators as such executors are now, and have been for ten years and more, the owners of two thousand and forty-eight shares of said stock of the par value of $100 each, and your orators now have in their possession the certificates thereof, which, with a duly certified copy of said will, codicil, and letters testamentary, they are ready to produce as this court shall direct.

7. That by an act of the Legislature of the State of New Jersey, approved February 9th, 1831, certain persons therein named were duly constituted a body politic and corporate, under the name of the Elizabethtown and Somerville Railroad Company, with a capital stock of $200,000, and were therein authorized and empowered to construct and operate a railroad from Elizabethtown to Somerville, and for such purpose were endowed with all necessary powers, privileges, and franchises requisite for said purpose. That said company duly organized under the said act of incorporation, and in accordance with it, and did build and operate the said railroad.

8. That by an act of the Legislature of the State of New Jersey, approved February 26th, 1847, certain persons therein named were constituted a body corporate and politic, by name of the Somerville and Eastern Railroad Company, with a capital stock of

$1,200,000, for the purpose of constructing and operating a railroad from Somerville, in said State of New Jersey, to a point on the Delaware river opposite Easton, in the State of Pennsylvania, and for said purpose said corporation was endowed with all the powers, privileges, and franchises necessary therefor. That said company duly organized under said act, and did immediately proceed to build and construct the said road and to operate the same.

9. That by another act of the Legislature of the State of
18 New Jersey, entitled "A supplement to an act entitled 'An act to incorporate the Somerville and Easton Railroad Company,'" passed February 26th, 1847, approved February 22d, 1849, it was among other things enacted that it should be lawful for the said The Somerville and Easton Railroad Company to purchase the railroad extending from Somerville, in the county of Somerset, to the Sound, in the county of Essex, constructed under and by virtue of the act entitled "An act to incorporate the Elizabethtown and Somerville Railroad Company, passed February 9th, 1831, being the act hereinbefore referred to." And it was further enacted in and by said act that when purchased the railroad so purchased should be and become a part of the railroad authorized to be constructed by the Somerville and Easton Railroad Company, and on its further construction and completion, maintenance, use, and enjoyment should be regulated and governed by the provisions of the charter of the last-named company, and for that purpose all and every provision of the act, entitled "An act to incorporate the Somerville and Easton Railroad Company," should extend and be applicable to the railroad so purchased in every respect as if the same had been authorized to be made, and had been made under the said last-mentioned act. And it was further enacted that thenceforth the said The Somerville and Easton Railroad Company should be known by the name of the Central Railroad of New Jersey, and your orators beg leave for greater certainty to refer to a copy of said act annexed hereto and made a part of this bill; that upon the passage of said act the purchase of the said The Elizabethtown and Somerville railroad by the Somerville and Easton Railroad Company was effected, pursuant thereto, and on or about the first day of April, 1849, the name of the said last-mentioned company was changed to the Central Railroad Company of New Jersey, and it has ever since been known by said name.

10. That by another act of the Legislature of New Jersey, entitled "A further supplement to an act entitled 'An act to incorpo-
19 rate the Somerville and Easton Railroad Company,' passed February 26th, 1847," approved March 17th, 1854, it was made lawful for the said The Central Railroad Company of New Jersey to increase its capital stock to an amount not exceeding $5,000,000, and to build and erect wharves, docks, or piers opposite to and adjoining any lands owned by said company in the township of Elizabeth, as might be necessary for the purposes of facilitating the transshipment of coal and general transportation business, and also to have and hold whatever wharves, piers, lands, or lots, steamboats, sailing vessels, and such other facilities in the city of New

York and elsewhere as might be necessary for the management of the business of said company, and in and by said act it was further required that the same should be accepted by the said company, and your orators show that said company did assent to and accept the said act, as they were required to do, and your orators beg leave to refer, for greater certainty, to the said act, or a copy thereof annexed to and made a part of this bill.

11. That by another act of the Legislature of New Jersey entitled "A further supplement to an act entitled 'An act to incorporate the Somerville and Easton Railroad Company,' passed February 26th, 1847," approved February 23d, 1860, the said Central Railroad Company of New Jersey were authorized to extend their railroad from Elizabeth to some point on New York bay, in the county of Hudson at or south of Jersey City, and for that purpose, on its construction and completion, maintenance, and enjoyment, all and every provision of the act entitled "An act to incorporate the Somerville and Easton Railroad Company," and of the several supplements thereto, were extended and made applicable to the railroad in said act authorized to be constructed, to a copy of which act, annexed to this bill of complaint and made a part thereof, your orators, for greater certainty, refer.

12. That under said several acts hereinbefore referred to, a line of railway was acquired, constructed, maintained, operated, and used as a continuous line of railway from a point on the New York bay (known as Communipaw) to Phillipsburg, a point on the Delaware opposite Easton, by the said The Central Railroad Company of New Jersey; that the scheme and enterprise of the said company thus entered into was the transportation of passengers, merchandise, coal, and other things between the said termini.

13. That by another act of the Legislature of New Jersey entitled "A further supplement to an act entitled 'An act to incorporate the Somerville and Easton Railroad Company,' passed February 26th, 1847," approved March 11th, 1863, the said The Central Railroad Company of New Jersey were authorized to increase their capital stock to any sum not exceeding $3,000,000 in addition to the then authorized amount of its capital, by force of which said act the capital stock of said railroad company was duly increased and become $8,000,000.

14. That by another act of the Legislature of New Jersey entitled "A further supplement to an act entitled 'An act to incorporate the Somerville and Easton Railroad Company,' passed February 26th, 1847." approved April 5th, 1865, the said The Central Railroad Company of New Jersey were authorized to increase their capital stock to any sum not exceeding $3,000,000 in addition to the then authorized amount of their capital stock, by force of which said act the capital stock of the said The Central Railroad Company of New Jersey was again duly increased and became $11,000,000.

15. That by another act of the Legislature of New Jersey entitled "A further supplement to an act entitled 'An act to incorporate the Somerville and Easton Railroad Company,' passed February 26th,

1847," approved March 5th, 1866, the said The Central Railroad Company were authorized to increase their capital stock to any sum not exceeding $4,000,000 in addition to the then authorized
21 amount of their capital stock, by force of which said act the capital stock of said The Central Railroad Company of New Jersey was again duly increased and became $15,000,000.

16. That by another act of the Legislature of New Jersey, entitled "An act to incorporate the Somerville and Eastern Railroad Company, passed February 26th, 1847," approved March 28th, 1872, the said The Central Railroad Company were authorized to increase their capital stock to any sum not exceeding $5,000,000, in addition to the then authorized amount of their capital stock. By the force of which said act the capital stock of the said The Central Railroad Company of New Jersey was duly increased, and became $20,000,000.

17. And your orators for greater certainty beg leave to refer to copies of the four last-mentioned acts, annexed to this bill and made a part hereof.

18. That by virtue of said acts the said company has from time to time issued shares of capital stock amounting at par value to the sum of $18,563,200, the larger part of which has been expended in perfecting the main line of said railroad between Communipaw and Phillipsburg, and in making preparations for the transportation of coal from the coal fields of Wilkesbarre and Lehigh, in Pennsylvania, to New York and other markets; that the coal business of said railroad company has increased so rapidly and so largely since the company embarked in that scheme and enterprise of mining and selling coal that during the year 1882 its earnings from that source were nearly $250,000.000.

19. Rightly foreseeing the great and ever-increasing demand for anthracite coal, the stockholders of the said The Central Railroad Company of New Jersey have by leases, contracts, and pur-
22 chases, obtained control not only of lines of railroad and other communication and transportation from said anthracite coal fields of Lehigh and Wilkesbarre, to the western terminus of their main line to Phillipsburg, there connecting with and contributing to their said main line, but have obtained the possession to an enormous extent of coal lands in said anthracite region, the title to which is in it or in the Lehigh and Wilkesbarre Coal Company, a corporation organized under the laws of Pennsylvania, whose capital stock is owned entirely, or almost so, by the said The Central Railroad Company of New Jersey, and which said coal lands are inculculably valuable and enormously productive.

20. That the business of developing these coal lands, and of mining and transporting coal from said lands by the said Central Railroad Company of New Jersey to Communipaw, New York, and other markets, has increased steadily year by year, so that the earnings of the said company from the said source alone has grown from $986,212 in 1878, as appears from a sworn report made according to law by the president of said company to the comptroller of the State of New Jersey, and published in the public documents of said State,

to which report, or a copy thereof, your orators beg leave to refer, to $290,382,711 in 1882; that in fact the said The Central Railroad Company of New Jersey is one of the great coal-producing and coal-transporting corporations of the United States, and as such it has, for years past, successfully maintained its position, although in rivalry and competition with such corporations as the Delaware and Hudson Canal Company, of New York, the Delaware, Lackawanna and Western Railroad Company, of Pennsylvania, and the Philadelphia and Reading Railroad Company, of Pennsylvania; that it has invested more than one million of dollars in wharves, piers, and apparatus for the transmission of coal from its cars when reaching tide water at Port Johnson and Elizabeth to vessels, whose purpose it is to carry it to every market which demands it; and your ora-
23 tors have been informed and believe it to be true that said company mined, transported, and sold during the year 1882 about four and one-quarter million tons of coal; that this tonnage has increased yearly, and is still increasing, and the said mining and transportation and sale of coal is the chief business of the said railroad company, and the one in which a very large part of its capital has been embarked by and with the assent and approval of its stockholders.

21. That besides this coal business, the said Central Railroad Company of New Jersey has, by its admirable management and its sound and sagacious policy, built up an extensive and steadily increasing local business in the transportation of freight and passengers between Jersey City and Phillipsburg and the numerous smaller towns and villages along the line of its road; that rates of fares and freight obtained for said local traffic are largely remunerative, and the business itself the source of a very large income; that during the year 1882 its earnings from such sources were nearly $4,000,000, all of which appears by the report of the receiver of said Central Railroad Company of New Jersey, made for the year 1882 to the comptroller of said State, pursuant to the statute in that case made and provided, and to that they beg to refer, for greater certainty, as to the capital stock, coal, passenger, and other business of said company for the said year 1882.

22. That in order to accommodate and secure the said local freighting business and travel the said Central Railroad Company of New Jersey has lawfully secured, and with the assent and approval of its stockholders, by lease, purchase, or contract, certain railroads which were feeders to its main lines of road or afforded an outlet for its coal, or were profitable, or bid fair to be profitable to it; among which roads so owned or possessed and controlled and operated by the said Central Railroad Company of New Jersey are the Newark and New York railroad, extending from Newark to a point
24 of junction with said Central road, near Communipaw; the branch road from Elizabeth to Newark; the New Jersey Southern railway, extending from Sandy Hook to Atco, a distance of about seventy miles, with a branch to Eatontown and Port Monmouth; the Dover and Rockaway railroad, extending from Port Oram to Rockaway, a distance of five miles; the Freehold and New York railroad,

extending from Freehold to Keyport, a distance of fourteen miles; the High Bridge railroad, extending from High Bridge to German Valley, a distance of about twelve miles, with branches to Chester and Hacklebarney mines; the Lake Hopatcong railroad, extending from Kenvil to Lake Hopatcong, a distance of five and one-half miles; the Longwood Valley railroad, extending from German Valley to Port Oram, a distance of thirteen and a quarter miles; the Manufacturers' railroad, extending from Brills to Passaic river, a distance of one and a half miles; the New York and Long Branch railroad, extending from Perth Amboy to Long Branch, with its several extensions to Bay Head; the Ogden Mine railroad, extending from Ogden mines to Nolan's Point, a distance of ten miles; the South Branch railroad, extending from Somerville to Flemington, a distance of fifteen miles; the Toms River railroad, extending from Manchester to Toms river, a distance of seven and a half miles; and the Vineland railroad, extending from Atsion to Bayside, a distance of forty-seven and one-half miles. And besides these roads thus enumerated there were also acquired other minor roads, for a full list of which said roads your orators beg leave to refer to the statement of such roads, as set out in the pretended lease, hereinafter more particularly referred to, and alleged to have been made by the Central Railroad Company of New Jersey to the Philadelphia and and Reading Railroad Company, a copy of which pretended lease is annexed to this bill and made a part thereof. The total mileage of said roads being about — miles.

23. That the moneys invested in the capital of the said "The Central Railroad Company" by its shareholders have been until the year 1877 very profitable and productive to them, and, judging from the past, and having regard to the vast coal fields owned and possessed by said company, its enormous local traffic, its central position, its favorable grades, and excellent condition, with many rapidly growing towns and villages along its entire length, said investment so embarked in said enterprise promises to be much more lucrative in the future, if the property and franchises under the protection and guardianship of the laws of the State of New Jersey shall be so continued, that the average rate of dividend upon the said capital stock of said company, for a number of years previous to and up to the year 1877 was ten per cent. per annum, that it is true, owing to the great depression in business and the great falling off in sales of coal, during the said year 1877, the said company became and remained for a time financially embarrassed, and in consequence thereof the chancellor of the State, by virtue of the authority in him vested by the laws thereof, decreed the said company to be insolvent, and took into the possession and custody of the court of chancery the property and franchises of said company, and did appoint one Francis S. Lathrop to be the receiver for said company; that said Lathrop acted as such receiver until his death, which occurred on or about the —— day of —— in the year 1881; whereupon the said chancellor did appoint one Henry S. Little as receiver for said company in the place of said Lathrop, deceased; that the said Lathrop during his receiv-

ership, and the said Little, his successor, so ably and successfully managed the financial affairs of said company, while under their respective control, and so successfully and economically operated said road, and so wisely carried on the said coal business of said company in all its phases, that the said company speedily overcame its financial troubles, and was, on the twenty-fifth day of May, now last past, by a formal decree of the said chancellor, declared to be solvent, and the said receiver was thereupon discharged as such receiver, and the said The Central Railroad Company resumed
26 the possession and operation of the said railroad and its branches and the carrying on of said business, and your orators show that the said receiver did by a former order announce the termination of said receivership, and the said Henry S. Little, as president of said railroad company, did also, by formal order, announce the resumption of possession of said railroad.

24. That if said company be managed with care, economy, and wisdom, the receipts of said company, from its said coal business and its said freight and passenger traffic, may rationally and confidently be expected to be so large as to yield and pay a yearly dividend of not less, and probably much larger, than ten per cent. upon its capital stock.

25. That although the legal title to all of the property hereinbefore set out is in the said The Central Railroad Company of New Jersey, yet it is, in fact, but a mere artificial person, created by law for the purpose of taking, holding, managing, and preserving the said property for the stockholders as a naked trustee, without interest, and that the real, equitable, and beneficial estate and interest in the said property, and in all the dividends and incomes accruing and to accrue therefrom, are in the stockholders thereof, among which are your orators, as heretofore stated; and that every act or thing which takes, destroys, endangers, or in anywise injures said property, or lessens its value or productiveness, is an injury to said stockholders not consenting thereto; and that any act or thing done without the consent of all of said stockholders, or by due process of law, which destroys the powers and control of those trustees to whom stockholders have confided their property, or which prevents those trustees from fully and freely performing said trusts, or which in whole or in part substitutes new or other trustees for those selected by said stockholders, or which takes from said stockholders their estate or interest in said properties, or their control over
27 them and their management, or transfers the possession and management of the property of said stockholders to another corporation or to any other person, or in anywise changes the scheme of said railroad company or the enterprise in which and to further which the said stockholders advanced and invested their capital, or which limits the productiveness of their property to them and diverts the earnings, or any part thereof, to other persons, natural or artificial, on any pretense whatever, is a fraud upon said stockholders, is unlawful as changing the contract between said corporation and said stockholders against their consent, and is absolutely void by the law of the land.

26. That the Philadelphia and Reading Railroad Company is a corporation claiming to have a corporate existence under and by virtue of the laws of Pennsylvania; that it owns a railroad extending into the anthracite coal region of Pennsylvania, and the larger part of its business consists in the moving and transportation and sale of anthracite coal; that it has always been a rival in business to the said The Central Railroad Company of New Jersey, and as such antagonized it at every point; that it has been, according to common report, grossly mismanaged by those who were at the head of its affairs; that it labors under a debt of nearly $175,000,000; that it has been in a state of insolvency for years past; that only within the present year have its property and franchises returned to its own custody and control, having been, because of its insolvency, taken from it and given to a receiver by a decree of the circuit court of the United States for the district of Pennsylvania; that, as is commonly reported, said company is not solvent and cannot pay its obligations and liabilities in the common and ordinary course of business; that large judgments for unpaid and overdue interest have been recovered against it in the State courts of Pennsylvania since the termination of said receivership, which have not and cannot be paid or satisfied by said company, and which constitute a valid and subsisting lien upon the whole or some portion of its property; that its properties are heavily mortgaged, and for much more than they would produce at a forced sale; that it does not pay, and is not able to pay, any dividend to its stockholders upon their investment of capital, nor does it hold out any *bona fide* well-founded hope or reasonable expectation of paying or being able to pay any such dividends from and out of its earnings in the near future; that it is plainly and manifestly struggling to save itself from bankruptcy and financial ruin; that its standing among financiers and capitalists is far from being good.

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27. That on or about the eleventh day of May, 1883, and before the said receiver was discharged as hereinbefore stated, an election for directors of said Central railroad was had, and a meeting of the stockholders thereof for that purpose was held by permission of the court of chancery of New Jersey, which election and meeting of stockholders your orators attended and voted thereat for directors, and at the same time your orators were informed that negotiations were on foot looking towards a leasing of said Central railroad to the said Philadelphia and Reading Railroad Company, and your orators were invited at said meeting to cast an informal ballot, or vote in favor of such scheme for so leasing said railroad, but your orators openly declined so to vote, and such declination on part of your orators was well known to all the officers of said Central Railroad Company. No draft or abstract of said contemplated lease was submitted to your orators, or either of them, at or before that time, and your orators were in entire ignorance of any of the terms which were proposed to be inserted in said proposed lease, if any such had been at that time agreed upon. And your orators did not suppose or suspect that it was the intention of the officers of said Central Railroad Company to execute any lease of their said road without

first submitting the same formally to the stockholders and receiving the assent of each and every stockholder thereto, and their action in that behalf hereinafter stated was a complete surprise to your orators.

29 28. That the directors chosen at said election were Henry S. Little, John Kean, Edward C. Knight, Franklin B. Gowen, Robert Garrett, Sidney Shepard, Theo. F. Randolph, Samuel Sloan, J. Kennedy Tod.

29. That immediately upon the discharge of the receiver of the said The Central Railroad Company of New Jersey, and the return of its said property, rights, and franchises to the said corporation as hereinbefore stated, the directors thereof, without the consent of the stockholders, and especially without the knowledge or consent of your orators, on or about the twenty-ninth day of May last past, did execute and deliver to the said The Philadelphia and Reading Railroad Company a writing, under its corporate seal, and signed by its president and attested by its secretary, pretending to be a lease, contract, bill of sale, and conveyance of real property, a copy of which said writing or pretended lease, contract, bill of sale, and conveyance of real property is annexed to this bill of complaint and is made a part hereof, and to which, for greater certainty, your orators beg leave to refer, by which said writing it is pretended that the Central Railroad Company of New Jersey did lease unto the said The Philadelphia and Reading Railroad Company, for the term of nine hundred and ninety-nine years, and at and for a specified rental to be paid to the stockholders thereof, to wit, a sum of money equal to six per cent. upon the outstanding capital stock of said Central Railroad Company, all its railroads, leased lines, ferries, real estate, property, plant, traffic, and business, and did immediately deliver possession thereof to the said The Philadelphia and Reading Railroad Company, which last-named company did enter into and take possession thereof, ousting the stockholders of the said Central Railroad Company of New Jersey from their own property, railroads, leased lines, ferries, real estate, property, plant, traffic, and business, against the consent of the stockholders, and especially against the consent

30 of your orators, and without any authority of law whatsoever, and that upon the execution of the said writing, the said The Philadelphia and Reading railroad did, by its president, issue an order or circular notice announcing that it had taken possession of the said railroads, leased lines, ferries, real estate, property, plant, traffic, and business of the said The Central Railroad Company of New Jersey, a copy of which said order is annexed to this bill of complaint and made a part hereof. Your orators further show that in and by said writing the said Central Railroad Company does absolutely, and without other consideration than the rental hereinbefore stated, sell, assign, and transfer absolutely unto the said The Philadelphia and Reading Railroad Company all its railroad and telegraphic material and supplies, except such as were, by said writing, pretended to be leased to said company; and all the leasehold estates, stocks, bonds, cash, book debts, and assets of every description now belonging or which may hereafter belong to said

Central Railroad Company. And the said Central Railroad Company did therein and thereby constitute the president of the said Philadelphia and Reading Railroad Company its true and lawful attorney to do and perform any act, or to sign and deliver any deed for said Central company necessary to carry out the said pretended contract.

30. That as hereinbefore stated, said pretended lease grant to the said Philadelphia and Reading Railroad Company a term of nine hundred and ninety-nine years, which grant is practically a conveyance of all the properties, rights, franchises, and estates, and interest to said company in perpetuity, and which said lease in and by its operation and effect, and according to the legal effect of its terms and conditions, does take, destroy, endanger, and in a very serious degree irreparably injure the said railroad property, estate, and franchises of the said lessor company, and does lessen the value and productiveness of said property to the stockholders of the said Central Railroad Company of New Jersey, and to your orator as stockholders
31 thereof; and does, in fact, destroy, without the consent of stockholders, or due process of law, the power and control over said property of the trustees of said properties, to whom the said stockholders, your orators among the rest, of said Central Railroad Company of New Jersey had intrusted their said property; and does, in fact, prevent the said trustees from fully and freely, or in anywise or degree, from performing the trust in them reposed by the said stockholders of said company, including your orators; and does, in fact, substitute new and other trustees to have the custody and control and management of said Central Railroad of New Jersey, and its properties and franchises, moneys, tolls, and earnings, for those selected and appointed by the said stockholders of said company; and does, in fact, take from said stockholders of said Central Railroad Company of New Jersey, including your orators, their estate and interest in said railroad and properties, and their control over the same, and deprives them of the management thereof; and does, in fact, convey and transfer the possession and management of said property, franchises, moneys, tolls of said stockholders to another and a financially embarrassed corporation; and does, in fact, change materially the scheme of said railroad company, and the enterprise and its primary character, in which and to further which the said stockholders, your orators' testator being one, did advance and invest their moneys; and does, in fact, limit the productiveness of said railroad property and franchises to said stockholders, and to your orators as such, and does divert the earnings thereof to other and different corporations, in which said stockholders of said Central Railroad Company have no interest or control.

31. That the said lease and contract had never been submitted by said directors of said Central Railroad Company to the stockholders thereof for their approval, and had never been approved or assented to by them, and especially had never been approved or assented to by your orators as stockholders; that it was made without
32 any authority of law and is illegal and inequitable and void; that said lease, a copy of which is annexed to this bill and

made a part hereof, as hereinbefore stated, cannot, in law, be made, executed, or acted upon, or carried into actual operation, without the formal consent of all and each of the stockholders of the lessor company, to wit, the Central Railroad Company of New Jersey, and of all who have embarked in the undertaking in which the said company, at the date of said pretended lease, was lawfully engaged, and it is therefore of no force and effect.

32. That your orators received no formal notice of the execution and delivery of said lease, and were not furnished with any copy or abstract thereof, but shortly after the execution thereof heard only that the same had been agreed upon through the newspapers of the day, and your orator, Alfred Mills, on or about the twenty-second day of June, 1883, called at the office of said Central Railroad Company in the city of New York and asked to see the said lease so agreed upon, or a copy thereof, and was shown by an officer thereof what was said to be a substantial copy thereof, and was permitted to read the same, but was not furnished with a copy thereof to read at his leisure and to submit to counsel.

33. That he did at once read the same, and immediately thereafter your orators submitted to counsel as best they could, without a copy thereof, the question of their rights, duties, and liabilities in the premises, and were advised in substance that said lease would be as to them void without their express assent as stockholders, and that it was their duty as trustees under said will to withhold their assent thereto and to oppose the ratification thereof.

34. That afterwards, and some time prior to the sixth day of July, 1883, your orators received notice from said Central Railroad Company of a meeting of the stockholders thereof, to be held on
33 said sixth day of July, for the purpose of ratifying said lease, which meeting your orator, Alfred Mills, acting on behalf of your orators, attended, and then and there openly and publicly voted against the ratification thereof, having previously stated to Henry S. Little, Esq., president thereof, his intention so to do. That such vote was by ballot, partly printed and partly written, your orator having altered and used for that purpose a printed ballot, which originally read "in favor" of ratifying said lease, so that when voted by him it read "against" such ratification.

35. That the said The Philadelphia and Reading Railroad Company, immediately after entering into possession of the said demised property, that is to say, on the said twenty-ninth day of May now last past, caused to be issued an order directed to all agents on the line of the said railroad properties owned, possessed, or operated by the said The Central Railroad Company of New Jersey, and until said alleged lease the agents and employés of said Central Railroad Company, ordering and commanding them to transmit all moneys received by them in the course of business transacted upon said lines heretofore leased, owned, operated by, or in possession of said Central Railroad Company, and pretended to be granted to said Philadelphia and Reading Railroad Company, to one S. M. Williams, who had been appointed, and was and is acting, as an agent of the said The Philadelphia and Reading Railroad Company, and said

moneys so transmitted were to be made payable to said Philadephia and Reading Railroad Company by checks drawn in favor of said last mentioned company, as by a copy of said order annexed to this bill, and making a part thereof, reference being had thereto, will more fully and at large appear.

36. That the daily receipts from the current business of the said The Central Railroad Company of New Jersey, as appears from the said report to the comptroller, amount, as your orators are
34 informed and believe, to more than $20,000, all of which, by law and right, belong to the stockholders of said Central Railroad Company, and all of which, by force of said pretended lease hereinbefore referred to, is being taken daily by the said The Philadelphia and Reading Railroad Company, mingled in the common fund of said last named company, and is being used by said last named company in paying and satisfying its own debts and liabilities, none of which are due and owing from or by said Central Railroad Company of New Jersey, nor is said last named company in any way responsible for such debts or liabilities, or any part thereof, and none of which said moneys so taken as aforesaid is the Philadelphia and Reading Railroad Company able to pay back to the stockholders of said Central Railroad Company of New Jersey, because of its own financial embarrassments.

37. That certain persons, to wit, Franklin B. Gowen, Joshua B. Lippincott, Henry Lewis, Isaiah V. Williamson, Edward C. Knight, Joseph B. Altemus, Henry S. Little, John Kean, Theodore F. Randolph, Robert Garrett, which Franklin B. Gowen, Joshua B. Lippincott, Isaiah V. Williamson, Henry Lewis, and Joseph B. Altemus are directors of the said Philadelphia and Reading Railroad Company, and said Franklin B. Gowen is president thereof, under cover of said pretended lease, and well knowing the illegality of said lease, have been, and are now, actively engaged in furthering the said hereinbefore recited invasion of your orators' rights as stockholders of the said Central Railroad Company of New Jersey, and especially have been active and instrumental, and are now active and instrumental, in diverting the business and traffic of said Central Railroad Company of New Jersey, and the moneys and tolls earned by said company, and rightfully and lawfully belonging to the stockholders of the said last-mentioned company, to the use, benefit, and behoof of the said Philadelphia and Reading Railroad Company, and are now, and have been, depriving, under pretense of said lease, said Central Railroad Company, and your orators, as stockholders thereof, of the benefit thereof. And your orators respectfully insist that said persons last named are bound to account with said Central Railroad Company, and with your orators,
35 for all of said tolls and moneys so taken by said Philadelphia and Reading Railroad Company, by, with, or through their furtherance, conniving, and contrivances, and to pay the same to said Central Railroad Company.

38. That the present board of directors of the said The Central Railroad Company of New Jersey were duly elected at the last annual meeting of said company, held on the eleventh day of May,

1883, and previous to the making, signing, and execution of said pretended lease and contract; that said board will, by virtue of the charter of said company, lawfully continue in the power until a full year shall elapse from and after the said date of said election, and cannot legally be removed therefrom by any action of the stockholders of said company before then; that during all of said time the said board of directors has had, and will have, the sole and exclusive charge of, and control over, the corporate action of said company, and the management of its affairs and the assertion of its rights; that the said board was elected by the votes of about five-sixths (in value) of the stockholders of said company, a very large number of said votes being cast at said election by means of proxies, directed to and held by Franklin B. Gowen, the president of said Philadelphia and Reading Railroad Company, or by others in his interest, and who, together with one Edward C. Knight, an active and managing director of said last-mentioned company, were, at that election, as hereinbefore stated, chosen directors of the said The Central Railroad Company of New Jersey; the said board of directors was chosen principally to make, execute, and deliver to the said Philadelphia and Reading Railroad Company said pretended lease and contract, and were pledged to make and execute the same, although these facts were concealed from stockholders of said Central Railroad Company by the said Gowen, and those in his interest who obtained said proxies; that, at the election of directors hereinbefore stated, most of the said shares of stock cast for the election of
36 the present directors were at the same time voted in favor of the scheme to make said pretended lease, so that the owners of fully four-sixths of said capital stock have, in effect, authorized, by said vote of their stock, the execution of said pretended lease and contract; that it is, and has been, utterly impossible and futile, therefore, for your orators to make, and your orators consequently aver that they have not made, any application to the said board of directors, or to the said stockholders, or the corporation as a body of the said The Central Railroad Company of New Jersey, to institute this suit for the protection of the shareholders of said stock of said company against the invasion of their rights, as hereinbefore stated, for the reason that such application, under the circumstances, would be futile and farcical, and would not afford to these complainants and other stockholders dissenting from said pretended lease a substantial remedy, inasmuch as the same board of directors who made the lease are now, and will be for nearly a year, in power and control of the corporate action of said Central Railroad Company of New Jersey, and inasmuch as fully four-sixths of your orators' company stockholders (in value) have signified their approval of the making and execution of said lease, and it would be impossible to obtain other than from a small minority of stockholders (in value) any co-operation in this demand, or in this suit, for the assertion and sustainment of the legal and equitable rights of dissentient stockholders, and that these facts entitle your orators to bring and maintain this suit in their own name, as well for themselves as for other stockholders similarly situated, and that, for the reasons hereinbefore

stated, your orators have not made any effort to secure action on the part of the directors of the said Central Railroad Company of New Jersey, or by the stockholders thereof.

39. And your orators show and charge that the making of said lease, and the delivery of said railroad property, franchises,
37 and things of the Central Railroad Company of New Jersey, in said lease mentioned, to the said The Philadelphia and Reading Railroad Company, and the diversion of said traffic and business, and the moneys and tolls, as hereinbefore stated, in the manner stated, and the change in the scheme and enterprise as aforesaid, work a great and irreparable injury upon and to your orators, for which the law affords no adequate remedy, and from which, your orators submit, they should be protected by this honorable court.

40. All of which actings and doings of said defendants are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators.

41. To the end, therefore, that the defendants may answer all and singular the premises, but not under oath, answer under oath being waived, and that the execution and delivery of the said indentures of lease may be decreed to have been illegal and void, and a fraud upon the rights of your orators in the premises, and that the said lease may be decreed to be surrendered, given up, and cancelled, and to be wholly void, and that the delivery of the possession of the aforesaid railroads, leased lines, ferries, real estate, property, plant, traffic, and business of the said The Central Railroad Company of New Jersey to the said The Philadelphia and Reading Railroad Company as aforesaid, and their possession thereof, may be decreed to have been, and to be, wholly illegal and a fraud upon your orators' rights in the premises, and that the Philadelphia and Reading Railroad Company may be decreed to surrender and deliver up to the Central Railroad Company of New Jersey the said railroads, leased lines, ferries, real estate, property, plant, traffic, business, cash, and other assets, and all additions thereto by way of improvements, repairs, and renewals; and that they be decreed to account for and pay over to the said The Central Railroad Company of New Jersey, without reduction or rebate upon any pretext whatever, all the
38 rents, issues, tolls, and profits arising from the said railroads, leased lines, ferries, real estate, property, traffic, plant, and business, and all the cash, certificates of indebtedness, book debts, and all other assets and moneys which have come or might by due diligence and management have come to their hands; and that the said The Philadelphia and Reading Railroad Company, its officers and agents, servants and employés, may be restrained from collecting, taking, or receiving any moneys, earnings, or tolls paid, payable, or becoming due for the transportation of coal, freight, passengers, or any other thing, over and upon the railroad hereinbefore specified as belonging to, controlled, or operated by the Central Railroad Company of New Jersey, at and before the execution of the said pretended lease, or in anywise intermeddling with the same, except to transmit the same forthwith, upon receipt to the treasurer of the

said The Central Railroad Company of New Jersey; and that the said The Central Railroad Company of New Jersey, its officers, agents, employés, and servants do desist and refrain from permitting, or in anywise allowing any part of the tolls, moneys, and earnings arising from the transportation of coal, freight, passengers, or any other thing over or upon the aforesaid railroads to be collected, taken, or received by the Philadelphia and Reading Railroad Company, its officers, agents, employés, and servants in any manner whatever, and that all moneys arising from the business operations on, over, and upon the Central Railroad of New Jersey, and lines controlled and operated by said Central Railroad Company as aforesaid, to wit, the moneys, earnings, and tolls paid, payable, or becoming due for the transportation of coal, freight, passengers, and any other thing over and upon the railroads heretofore specified as belonging to, controlled, or operated by the said The Central Railroad Company of New Jersey, at and before the execution of the said pretended lease, be paid as received and collected, under the direction of this honorable court, to the treasurer of the said The Central Railroad Company of New Jersey, to be
39 used as far as necessary in the payment of the current expenses of said railroads, and such fixed charges as the said company are liable to pay, and not otherwise; and that the president of the said The Philadelphia and Reading railroad may be restrained from acting under the said alleged power of attorney in said writing contained; and that the said The Central Railroad Company of New Jersey may be decreed to take possession of the aforesaid railroads, leased lines, ferries, real estate, property, traffic, plant, and business, cash, and assets, and to use and administer the same in the due execution of, and in conformity to, the trusts charged upon and reposed in it by the laws and charters aforesaid, and to unite in the taking of the aforesaid account, and to distribute and pay over to your orators their proper proportionate share of all such moneys as shall be found to be due in such accounting from the said The Philadelphia and Reading Railroad Company to the said The Central Railroad Company of New Jersey; and that the said defendants may be decreed to pay to your orators all damages which your orators have sustained by reason of the aforesaid illegal acts of the said defendants, and your orators' costs and charges in this behalf expended; and that upon the failure of the Philadelphia and Reading Railroad Company to pay back to said The Central Railroad Company of New Jersey all the moneys already taken, or which may be taken, by virtue of said pretended lease, the said Franklin B. Gowen, Joshua B. Lippincott, Henry Lewis, Isaiah V. Williamson, Edward C. Knight, Joseph B. Altemus, Henry S. Little, John Kean, Theodore F. Randolph, Robert Garrett, may be decreed to pay the same to the said Central Railroad of New Jersey; and that this honorable court shall appoint some suitable person to be the receiver of the said The Central Railroad Company of New Jersey, to take charge and custody of the said properties and possessions of the said The Central Railroad Company of New Jersey, pending the determination of this suit; and that your orators may have such further and

40 other relief in the premises as the case may require: May it please your honors, the premises considered, to grant unto your orators the State's writ of subpœna, under the seal of this honorable court, to be directed to the said The Central Railroad Company of New Jersey, The Philadelphia and Reading Railroad Company, Franklin B. Gowen, Joshua B. Lippincott, Henry Lewis, Isaiah V. Williamson, Edward C. Knight, Joseph B. Altemus, Henry S. Little, John Kean, Theodore F. Randolph, and Robert Garrett, commanding them, and each of them, on a certain day, and under a certain penalty therein to be expressed, personally to be and appear before this honorable court, then and there to answer the premises, and to stand to, abide, and perform such decree as to your honor shall seem meet and agreeable to equity and good conscience. And your orators, as in duty bond, will ever pray, &c.

HENRY C. PITNEY,
Solicitor and of Counsel with Complainant.

41 THE PHILADELPHIA AND READING RAILROAD CO.,
GENERAL OFFICE, 227 SOUTH FOURTH STREET,
PHILADELPHIA, *May 29th*, 1883.

The Philadelphia and Reading Railroad Company has this day taken possession of the railroads, leased lines, ferries, real estate, property, plant, traffic, and business of the Central Railroad Company of New Jersey, under a lease and contract executed this day.

The jurisdiction of the various heads of departments of the company is hereby extended over the corresponding departments of the lessor company, and each will assume control over and give such directions in his particular department as will secure the most efficient and economical working of the new system.

By order of the board of managers:

FRANKLIN B. GOWEN, *President.*

THE PHILADELPHIA AND READING RAILROAD CO.,
GENERAL OFFICE, 227 SOUTH FOURTH STREET,
PHILADELPHIA, *May 29th*, 1883.

To agents on the Central New Jersey lines:

Referring to the president's circular of this date, moneys collected on account of business from and after June 1st, 1883, will be remitted to Mr. S. M. Williams, auditor of the Central New Jersey lines, 119 Liberty street, New York.

Checks will be required to be made payable to the Philadelphia and Reading Railroad Company.

S. BRADFORD, *Treasurer.*

A true copy:
G. S. DURYEES.

42 Whereas the railroad of The Central Railroad Company of New Jersey and that of The Philadelphia and Reading Railroad Company are connected with each other by means of intervening railroads leased to and operated by the said The Philadelphia and Reading Railroad Company, thus forming a continuous line

from the city of Philadelphia, in the State of Pennsylvania, to Jersey City, in the State of New Jersey, and thence by means of ferry-boats to the city of New York; and the said companies, in pursuance of the laws of the States of Pennsylvania and New Jersey in such cases made and provided, and of every other power and authority them in that respect enabling, have agreed that the railroad of the said The Central Railroad Company of New Jersey shall be leased to The Philadelphia and Reading Railroad Company, and shall be run, used, and operated by the latter company upon the terms and conditions hereinafter set forth:

Now, this indenture, made this twenty-ninth day of May, A. D. 1883, by and between The Central Railroad Company of New Jersey, hereinafter called the party of the first part, and The Philadelphia and Reading Railroad Company, hereinafter called the party of the second part—

Witnesseth, That for and in consideration of the covenants and agreements of the party of the second part hereinafter contained, and of the sum of one dollar ($1) to the party of the first part in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, the party of the first part doth hereby let and demise to the party of the second part, its successors and assigns, the entire railroad of the party of the first part, as the same is now located and constructed, or as the same may be hereafter located and constructed, in pursuance of any and every lawful authority
43 now existing, or which may hereafter exist, together with all its right, title, and interest of every description whatsoever in and to the following-described railroads, whether owned or acquired by virtue of any lease, contract, or otherwise, viz: The main line extending from Jersey City, in the State of New Jersey, to Phillipsburg, in the same State, a distance of about seventy-two and three-tenths miles; the Newark Branch, extending from Communipaw to Newark, a distance of about six and twenty-two hundredths miles; the Newark and Elizabeth Branch, extending from Elizabethport to Brills, a distance of about five and four-tenths miles; the Elizabethport Loop Branch, extending from Elizabeth to Elizabethport, a distance of about three miles; the Elizabethport and Perth Amboy Branch, extending from Elizabethport to Perth Amboy, a distance of about twelve and sixteen hundredths miles, with the Bayway Extension, about eighty-two hundredths of a mile in length; the Manufacturers' railroad, extending from Brills to the Passaic river, a distance of about one and five-tenths miles; the Constable's Hook railroad, extending from Centreville to Constable's Hook, a distance of about one and ninety-seven hundredths miles; the High Bridge railroad, extending from High Bridge to German Valley, a distance of about eleven and seventy-two hundredths miles, with the Chester Branch railroad and extension, about seven and twenty-five hundredths miles in length; the Longwood Valley railroad, extending from German Valley to Port Oram, a distance of about thirteen and twenty-six hundredths miles; the Lake Hopatcong railroad, extending from Kenvil to Nolan's Point, a distance of about five and five-tenths miles; the Dover and Rockaway railroad, extending

from Port Oram to Rockaway, a distance of about four and nine-tenths miles; the Ogden Mine railroad, extending from Ogden Mine to Nolan's Point, a distance of about ten miles, with the Ogden Mine Branch, about three miles in length; the South Branch railroad, extending from Somerville to Flemington, a distance of about fifteen and eight-tenths miles; the New York and Long
44 Branch railroad, extending from Perth Amboy to Bay Head, a distance of about thirty-eight and four hundredths miles; the New Jersey Southern railroad, extending from Sandy Hook to Atco, a distance of about seventy-eight and seventy-four hundredths miles (including about eleven miles formerly known as the Long Branch and Sea Shore Railroad), with the branch from Eatontown to Port Monmouth, about nine and fifty-three hundredths miles in length; the Tom's River railroad, extending from Manchester to Tom's River, a distance of about seven and forty-eight hundredths miles; the West End Railroad, extending from East Long Branch to West End, a distance of about one and seventy-three hundredths miles; the Tom's River and Waretown railroad, extending from Tom's River to Barnegat, a distance of about fourteen and eighty-three hundredths miles; the Vineland railway, extending from Atsion to Bayside, a distance of about forty-six and thirty-one hundredths miles; the Lehigh and Susquehanna Railroad, extending from Phillipsburg aforesaid to Union Junction, in the State of Pennsylvania, a distance of about one hundred and five miles, which includes the bridge across the Delaware river at Phillipsburg; the Nanticoke railroad, extending from Ashley to the Newport mines, a distance of about eight and one-half miles, with a branch to the Lee mines about two miles in length, and an extension from Ashley to Gardner's switch, a distance of about four and one-half miles, and an extension from Union Junction to the Everhart mines, a distance of about three miles, and from Mill Creek to the Enterprise mines, a distance of about four miles; the Nescopec Branch, extending from White Haven to Upper Lehigh, a distance of about nine miles; the Nesquehoning Valley Railroad, extending from Nesquehoning Junction to Tamanend, where it connects with the Catawissa Railroad (now leased to and operated by the party hereto of the second part), a distance of about sixteen and one-half miles; the Treskow Branch railroad, extending from Silver Brook to Audenried, a distance of about seven and two-tenths miles; the Coplay Branch,
45 extending from Laubach station to the premises of the Thomas Iron Company, a distance of about one mile; the branch from Bethlehem across the Lehigh river to South Bethlehem, where it connects with the North Pennsylvania railroad (now leased to and operated by the party hereto of the second part), a distance of about fourteen hundred and twenty-eight feet; the inclined planes from Ashley to Solomon's Gap station, a distance of about three miles (including all the machinery connected therewith); the Drifton Branch railroad, extending from Drifton to Drifton Junction, a distance of about two-tenths miles; the Pond Creek Branch railroad, extending from Sandy Run to Nescopec, a distance of about two and five-tenths miles; the Lehigh and Lackawanna railroad, extending

from Bethlehem to Penn Argyll, a distance of about twenty-seven and four-tenths miles; the Spring Brook railway, extending from Moosic to Spring Brook, a distance of about eight and three-hundredths miles; the Union Coal Company's railroad, extending from Union Junction to Green Ridge, a distance of about fifteen and one-tenth miles; the Summit Hill railroad, extending from Mauch Chunk to Summit Hill, a distance of about eight miles, in the State of Pennsylvania; the Smyrna and Delaware Bay railroad, extending from Pierson's Cove, Delaware, to Massey's Junction, Maryland, a distance of about twenty miles; and the Kent county railroad, extending from Massey's Junction to Chestertown, Maryland, a distance of about twenty-one miles, with an extension from Worton Junction to Nicholson, about nine miles in length; together with all the branches, laterals, extensions, sidings, turnouts, tracks, bridges, viaducts, culverts, rights of way, water rights, and privileges, all the lands, machinery, fixtures, depots, stations, water stations, houses, buildings, structures, improvements, appurtenances, tenements, and hereditaments of whatever kind or description, and wherever situate, now held, leased, or owned by the party of the first part, or which may at any time hereafter, during the term of this demise, be acquired by the party of the first part: Provided, That such after-acquired
46 property shall be acquired for some purpose incident to, or connected with, the maintenance, operation, construction, or extension of the aforesaid railroads, with their branches and appurtenances; and together with all ferries and rights of ferriage now belonging to, or which may hereafter be acquired by, the party of the first part, in any manner whatsoever; also all the engines (stationary and locomotive), cars, tenders, trucks, and other rolling-stock, tools, implements, machines, and personal property of every kind and description, including all ferry-boats, tugs, floats, and barges, belonging to the party of the first part, and in use or intended or adapted for use upon or about the railroads and premises demised, or the business thereof (of which a partial schedule is hereunto annexed, marked "A"); it being the intention and agreement of the parties hereto that all cars and other rolling-stock now used by, or in the possession of, the party of the first part under the terms of any car trust shall, when and so soon as they shall become the property of the party of the first part, and to the extent of the interest of the party of the first part therein, be included in the terms of this lease (excepting and excluding, however, railroad materials, such as rails, iron, cross-ties, timber of all kinds, coal and other fuel, oil, and other articles generally known as railroad supplies, which, on the day of the date of these presents, shall be stored and reserved for use or consumption, and shall not then be in actual use for railroad purposes); and all rights, benefits, and privileges of every nature whatsoever now enjoyed, or which may hereafter be enjoyed, by the party of the first part under any deed, lease, contract, or other assurance whatsoever, the party of the second part being hereby vested absolutely with all such rights, benefits, and privileges as fully as though the same were herein fully and at large set forth and specifically hereby assigned, sublet, and transferred, including all equitable, as

well as legal, rights; also all the rights, powers, franchises, and privileges which may now, or at any time hereafter during the aforesaid term, be lawfully exercised or enjoyed in or about the use, management, maintenance, renewal, extension, alteration, or improvement of the railroads and appurtenances above demised; together with all rights now enjoyed by the party of the first part to the use of the lines of telegraph (including all the poles, wires, insulators, batteries, fixtures, and appurtenances now existing, or as the same may hereafter exist) along the line of the said railroads or their branches, or any extension thereof.

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And that the party of the first part doth hereby grant, bargain, sell, alien, enfeoff, release, convey, and confirm unto the said party of the second part, its successors and assigns, all the other real estate (of which a partial schedule is hereunto annexed marked "B") of the said party of the first part, wheresoever the same may be situate, and whether specifically mentioned in the said schedule or not, of whatever nature or kind the same may be, and for whatever purpose held, and whether the same shall be held in possession, remainder, or reversion, and whether the legal or equitable title shall be vested in the party of the first part; including therein all the lands with the buildings, structures, and improvements thereon erected, tenements and hereditaments of the said party of the first part.

And the said party of the first part hereby sells, assigns, and transfers unto the party of the second part, its successors and assigns, all the railroad materials and supplies excepted and excluded above; and also all the telegraphic materials of every kind now on hand; and the unexpired terms of all and every leasehold estate of every nature whatsoever, now or hereafter to be acquired by the party of the first part, together with all its rights under all deeds, contracts, or agreements, so far as the same may be lawfully assignable; and also all stocks, bonds, certificates of indebtedness, cash, book debts, and assets of every kind and description whatsoever, now belonging or which may hereafter belong to the party of the first part (a schedule of which so far as at present ascertained is hereunto annexed, marked "C"); the party of the first part hereby expressly covenanting to execute and deliver all such transfers, proxies, or powers of attorney in relation to such stocks, bonds, or other securities (whether now pledged as collateral security or not), as may be necessary to enable the party of the second part to exercise all the rights now vested in the party of the first part to vote upon such stocks, or to collect the principal, interest, or dividends upon such stocks, bonds, certificates of indetedness, book debts, or other assets.

48

To have and to hold the premises thus leased and demised unto the party of the second part, its successors and assigns, for the full term of nine hundred and ninety-nine years from the date hereof, so far as the same are owned by the party of the first part; and so far as the same are held under lease by the party of the first part, for the said full term of nine hundred and ninety-nine years from the date hereof, or, with reference to each leased estate so demised,

for a period three months less than the longest period in each case, respectively, for which the said party of the first part shall be entitled to demise the several premises hereinbefore referred to; and to have and to hold the premises hereby absolutely conveyed to the party of the second part, its successors and assigns, in fee-simple:

And in consideration of the premises the parties hereto do hereby covenant and agree as follows, each party covenanting for itself, its successors and assigns, with the other, its successors and assigns:

First. That the party of the second part shall and will pay to the party of the first part, as rent for the premises hereby demised, in equal quarterly payments, on the first days of September, December, March, and June—the first payment to be made on the first day of September, 1883—such sum as will enable the party of the first part to pay and discharge the interest, dividends, and fixed charges hereinafter set forth, viz:

(*a.*) Interest at the rate of seven per cent. annually upon now outstanding bonds, amounting to five million dollars ($5,000,000),
49 secured by a mortgage bearing date the fifteenth day of December, 1868, executed by the party of the first part, known as the "First Mortgage."

(*b.*) Interest at the rate of seven per cent. annually upon now outstanding bonds, amounting to four million four hundred thousand dollars ($4,400,000), bearing date the first day of November, 1872, known as the "Convertible Bonds," and since secured by the mortgage bearing date the first day of September, 1874, executed by the party of the first part, known as the "Consolidated Mortgage."

(*c.*) Interest at the rate of seven per cent. annually upon now outstanding bonds, amounting to fifteen million dollars ($15,000,000), secured by the said mortgage bearing date the first day of September, 1874, executed by the party of the first part, known as the "Consolidated Mortgage."

(*d.*) Interest at the rate of seven per cent. annually upon now outstanding bonds, amounting to five million four hundred and four thousand dollars ($5,404,000), secured by a mortgage bearing date the first day of May, 1878, executed by the party of the first part, known as the "Adjustment Mortgage."

(*e.*) Interest at the rate of seven per cent. annually upon now outstanding bonds, amounting to two million four hundred thousand dollars ($2,400,000), bearing date the first day of May, 1878, known as the "Income Bonds."

(*f.*) Interest at the rate of seven per cent. annually upon the bonds, amounting to six hundred thousand dollars ($600,000), issued by the Newark and New York Railroad Company, and secured by a mortgage bearing date the first day of July, 1867, executed by the said company.

(*g.*) Interest at the rate of six per cent. annually, in gold, upon bonds, amounting to two million three hundred and ten thousand dollars ($2,310,000), issued by the Lehigh Coal and Navigation Company, and secured by a mortgage bearing date the twenty-seventh day of November, 1867, executed by the said company.

(*h.*) Interest annually accruing upon now outstanding bonds,

amounting to one hundred and eighty-five thousand six hun-
50 dred and thirteen dollars ($185,613), secured by mortgages of various dates, executed by the party of the first part to various persons, or which the party of the first part has assumed to pay, a schedule of which said bonds is hereto annexed marked "D."

(*i.*) Dividend at the rate of seven per cent. annually on shares of the capital stock of the Newark and New York Railroad Company, of the par value of eighty-seven thousand three hundred and fifty dollars ($87,350).

(*j.*) Dividend at the rate of six dollars annually per share on five shares of the capital stock of the Elizabethport and New York Ferry Company, of the total par value of twenty-five hundred dollars ($2,500).

(*k.*) Interest at the rate of six per cent. annually on the loan due to the Mutual Life Insurance Company of New York, amounting to four hundred thousand dollars ($400,000).

(*l.*) Interest to become due hereafter on the following Car Trusts, viz:

(1.) Railroad Car Trust of Philadelphia, principal as of May 1st, 1883, amounting to one hundred and fifty-eight thousand four hundred dollars ($158,400).

(2.) New Jersey Car Trust, principal as of May 1st, 1883, amounting to three hundred and twenty-eight thousand dollars ($328,000).

(3.) The Central New Jersey Car Trust, principal as of May 1st, 1883, amounting to five hundred and eighty-five thousand dollars ($585,000).

(4.) Guarantee Car Trust, principal as of May 1st, 1883, amounting to eight hundred thousand dollars ($800,000).

(5.) The Central Railroad of New Jersey Car Trust, principal as of May 1st, 1883, amounting to nine hundred and forty-three thousand dollars ($943,000).

(*m.*) Rent at the rate of six per cent. annually on the sum of four hundred and thirty-eight thousand three hundred dollars ($438,300), payable under the agreement of lease of the South Branch Railroad Company, dated March 18th, 1862.

51 (*n.*) Dividend at the rate of seven per cent. annually on twenty thousand shares of the capital stock of the New York and Long Branch Railroad Company, of the par value of two million dollars ($2,000,000).

(*o.*) Interest at the rate of five per cent. annually upon the bonds, amounting to one million five hundred thousand dollars ($1,500,000), issued by the New York and Long Branch Railroad Company, and secured by a mortgage bearing date the sixteenth day of January, 1882, executed by the said company.

(*p.*) Dividend at the rate of five per cent. annually on shares of the capital stock of the Ogden Mine Railroad Company, of the par value of four hundred and fifty thousand dollars ($450,000), and also the sum of $500 annually to defray the expenses of maintaining the organization of the Ogden Mine Railroad Company.

(*q.*) Interest at the rate of five per cent. annually upon the bonds,

amounting to five million dollars ($5,000,000), issued by the American Dock and Improvement Company, secured by a mortgage bearing date the first day of July, 1881, executed by the said company.

(*r.*) Interest at the rate of six per cent. annually upon the bonds, amounting to one million five hundred and ninety thousand six hundred dollars ($1,590,600), issued by the New Jersey Southern Railway Company, and secured by a mortgage bearing date the fifteenth day of July, 1879, executed by the said company.

(*s.*) Interest at the rate of seven per cent. annually upon bonds, amounting to two hundred thousand dollars ($200,000), issued by the Long Branch and Sea Shore Railroad Company, secured by a mortgage bearing date the first day of December, 1869, executed by the said company.

(*t.*) Dividend at the rate of six per cent. annually upon one thousand shares of the capital stock of the Dover and Rockaway Railroad Company, of the par value of one hundred thousand dollars ($100,000), and also the sum of five hundred dollars annually to defray the expenses of maintaining the organization of the Dover and Rockaway Railroad Company.

52 (*u.*) Interest at the rate of six per cent. annually upon bonds amounting to fifty thousand dollars ($50,000), issued by the Dover and Rockaway Railroad Company, secured by a mortgage bearing date the first day of January, 1881, executed by the said company.

(*v.*) Interest at the rate of seven per cent. annually upon bonds amounting to one hundred and fifty thousand dollars ($150,000), issued by the New Jersey Stock Yard and Market Company, secured by a mortgage bearing date the first day of June, 1866, executed by the said company.

(*w.*) The rent annually accruing under the provisions of the lease of the Tom's River and Waretown railroad.

(*x.*) The rent annually accruing under the provisions of the lease of the West End railroad.

(*y.*) The rent annually accruing under the provisions of the lease by the Lehigh Coal and Navigation Company to the party hereto of the first part, of the Lehigh and Susquehanna railroad and other railroads, described in the said lease, dated March 31st, 1871.

(*z.*) Interest at the rate of five per cent. per annum upon certificates of indebtedness, amounting to eighty thousand dollars ($80,000), issued by the party hereto of the first part to the Communipaw Coal Company.

(*zz.*) An annual dividend of six per cent. upon the present outstanding capital stock of the party of the first part, amounting at the par value thereof to the sum of eighteen million five hundred and sixty-three thousand two hundred dollars ($18,563,200): Provided, That the rental of the said six per cent. dividend upon the said capital stock shall not begin to run until September 1st, 1883, the first quarterly payment to be made on the first day of December, A. D. 1883.

And whereas the party of the first part has incurred and is now liable for an indebtedness amounting to the sum of two million and

sixty-two thousand dollars ($2,062,000), which is classified and
53 known as its floating debt, and which it is proposed to retire—
either by the application to the payment thereof of so much of the assets of the party of the first part hereby assigned to the party of the second part, and which shall be subject to the disposition or control of the party of the second part, as may be necessary; or, at the option of the party of the second part, by converting the same into either bonds secured by mortgage, or newly issued shares of the capital stock of the party of the first part: Provided, That in such conversion neither the said shares of stock nor the said bonds shall be issued at less than their par value, without the consent of the party of the second part.

It being understood and agreed that the cash, assets, and other securities hereby assigned to the party of the second part, or the proceeds thereof, shall be first applied to the payment of the current liabilities of the party of the first part, and the balance of the said assets shall be applicable to the payment of the floating debt. In case, however, any part of the said current liabilities of the party of the first part shall be paid or discharged by the party of the second part by means of its own funds, then in such case the party of the second part shall be entitled to receive bonds or capital stock to the amount of the said payments, in the manner provided in the fourteenth section of this indenture.

And whereas the party of the first part, in determining the rental for which it would be willing to execute this lease, took into account its liability for interest at the rate of six per cent. upon the said floating debt, or so much thereof as might from time to time remain unextinguished, either by payment or conversion into bonds or shares of stock, as aforesaid, as well as for interest at the rate of not exceeding six per cent., or dividends at the rate of six per cent., after December 1st, 1883, upon either the said bonds or shares of stock last aforesaid, it is therefore further agreed that the party of the second
part shall pay to the party of the first part, as additional rent,
54 during the term of this lease, on each quarter day, as aforesaid, a sum which shall be equal to the interest during the preceding quarter on the said amount of $2,062,000, at which the party of the first part estimates its floating debt, which quarterly sum shall be subject to the following variations:

Payment, as aforesaid, of any portion of the said floating debt by the party of the second part shall reduce each successive quarterly payment thereafter by a sum equal to interest at the rate of six per cent. per annum, during the preceding quarter, on the portion thus paid, the computation of interest to be made from the date when the said portion was paid. Conversion of any portion of the said floating debt into bonds of the party of the first part shall be followed by the substitution of interest, not exceeding six per cent. per annum, on the said bonds from the date of conversion, instead of interest on the converted floating debt, as an element of calculation in ascertaining the said quarterly sum. Conversion of any portion of the said floating debt into shares of capital stock of the party of the first part shall be followed by the substitution of a dividend of six

per cent. per annum after December 1st, 1883, on the said shares, instead of interest on the converted floating debt, as an element of calculation in ascertaining the said quarterly sum: Provided, however, and it is hereby expressly understood, That in the conversion of the said floating debt, or any portion thereof, into either bonds or shares of capital stock there shall be no duplication of interest or duplication of interest and dividend for the same period of time.

And the said party of the first part hereby also expressly covenants to apply the abovesaid rent to the payment of interest, dividends, rents, and payments accruing from time to time upon the stocks, bonds, leases, obligations, and guarantees of the said party of the first part, which are hereinabove mentioned, or any of them; and the said party of the first part also hereby covenants to make no further issues of stock nor incur any further indebtedness without the consent of the party of the second part.

55 And it is further understood and agreed that if the party of the second part shall pay off and cancel, discharge, or satisfy the principal of any sum, the interest of which was payable as aforesaid from the annual rent payable by the party of the second part for the premises hereinbefore demised, the said annual rent payable by the party of the second part shall thereafter be reduced by a sum equal to that theretofore annually payable as interest, including therein all taxes which, by the terms of the obligation, were payable in relief of the holders; but if the party of the second part shall prefer to purchase, and shall purchase the stock, bond, certificate of loan, mortgage, or other obligation by which such principal sum shall be evidenced or secured, or, if unable to purchase, shall pay off the same, and then elect to succeed and be subrogated to all the rights and securities resulting therefrom or incident thereto before and at the time of the said payment, the said party of the second part shall, as to the said bond, certificate of loan, mortgage, or other obligation, stand in the same position as any other holder of a like security, and the interest thereon shall be retainable from the quarterly payments of rent due by the party of the second part.

Second. That the party of the second part shall also pay to the party of the first part the yearly sum of eighteen thousand dollars ($18,000) lawful money of the United States, in equal quarterly payments of forty-five hundred dollars, on the quarter day aforesaid; the said sum of eighteen thousand dollars to be paid for the purpose of defraying the expenses of maintaining the corporate organization of the party of the first part, and to be appropriated to that purpose only. It being further understood and agreed that the party of the second part shall at all time during the continuance of the term hereby created provide suitable offices in the city of New York for the transaction of all necessary business of the party of the first part.

Third. That the party of the second part shall and will,

56 during the continuance of the term hereby demised, assume the payment of, and punctually and faithfully pay all taxes and assessments upon the capital stock of the party of the first part, upon the yearly payments herein agreed to be made by the party of

the second part to the party of the first part, and upon the dividends declared and paid by the party of the first part to its stockholders out of the said yearly rent, for the payment or collection of which taxes or assessments the said party of the first part would otherwise be liable or accountable under any lawful authority whatever: Provided, however, That nothing in this covenant contained shall require the party of the second part to pay for any one year a greater amount of taxes or assessments on the capital stock of the party of the first part than the amount that would be chargeable or assessable for such year upon a capital stock of one hundred and eighty-five thousand six hundred and thirty-two shares (together with so many shares as may, in accordance with the terms hereof, be issued by the said party of the first part with the consent of the party of the second part), at the par or appraised value of one hundred dollars per share, paying a dividend at the rate of six per cent., after December 1st, 1883, for each year of the term hereby created; nor any greater amount of taxes or assessments on dividends than the amount that would be chargeable or assessable on a dividend or dividends at the rate aforesaid for each year on shares of the number and value aforesaid: And provided further, That nothing herein contained shall be construed as rendering the said party of the second part liable or responsible for taxes or assessments on any dividend or part of dividend paid by the party of the first part out of any other fund than the aforesaid yearly rent, and any dividend or part of dividend for the tax on which the said party of the second part shall not be liable or responsible as aforesaid shall be disregarded in computing the rate of dividend, wherever the tax on capital stock shall be graduated by the rate of dividend paid during the year.

Fourth. That the party of the second part shall and will punctually and faithfully pay all taxes, charges, levies, claims,
57 liens, and assessments of any and every kind, which, during the continuance of the term hereby demised, shall, in pursuance of any lawful authority, be assessed or imposed on the demised premises, or any part thereof, or upon the business there carried on, or the receipts, gross or net, therefrom, or upon the franchises of the said party of the first part; and also any taxes, charges, or assessments in respect to either the principal or interest of bonds or obligations of the party of the first part the interest of which shall be paid out of the rent aforesaid, which, in pursuance of any lawful authority, the party of the first part shall itself be required to pay without recourse to the parties to whom such interest is paid, whether such recourse shall not be allowed by the provisions of the statute, ordinance, or enactment imposing or authorizing such tax, charge, or assessment, or shall have been waived or released by any now existing agreement of the party of the first part in respect thereto.

And all other payments required to be made by the party of the first part during the term of this indenture, and not herein otherwise specially provided for, shall be assumed and discharged by the party of the second part, as if the said party of the second part were primarily liable for the same, but to the same extent only as the party of the first part is legally liable therefor: Provided, That

for any such payments, the party of the second part shall be entitled to receive bonds or capital stock to the amount of said payments, in the manner provided in the fourteenth section of this indenture: It being distinctly understood and agreed, That nothing herein contained shall be so construed as to impose any obligation or liability upon the party of the second part under the terms of two certain agreements bearing date the third day of January, 1882, between F. S. Lathrop, receiver, the party hereto of the first part, the New York and Long Branch Railroad Company, the
58 New Jersey Southern Railway Company, and the Pennsylvania Railroad Company, which said two agreements the party of the first part declares to be void and of no effect: Provided, however, That the party of the first part shall, from time to time, and at all times, give immediate notice to the party of the second part of any claim presented or suit brought against the said party of the first part, by which the party of the second part may be involved in any liability whatever, and permit the party of the second part to make, in the name and on behalf of the party of the first part, but at the cost and expense of the party of the second part, any legal defence that can be made to such claim or suit.

Fifth. That the party of the second part will and shall, during the continuance of the hereby demised term, keep and maintain the said demised railroads and appurtenances, buildings, structures, and fixtures in good order and repair; keep in public use, manage, and efficiently operate the said railroads, from time to time, and at all times indemnify and save harmless the said party of the first part from all liabilities, damages, claims, and suits by reason of anything done or omitted by the party of the second part in the premises; and, at the expiration or other determination of the hereby demised term, surrender the said railroad and premises in the same good order and condition as they now are: It being understood and agreed, however, That all policies of insurance now held by the party of the first part on any building or structure hereby demised shall be assigned to the party of the second part, and all sums received thereunder shall, at the option of the party of the second part, be either appropriated to restoring or replacing the building or structures covered by such policies, or to the discharge, by purchase or payment, of any bond or obligation secured by any now existing mortgage upon the demised railroad, in which latter case the annual amount payable by the party of the second part to the party of the first part shall be decreased by an amount equal to the annual interest upon the said discharged bond or obligation.

59 Sixth. That the party of the second part shall and will, during the continuance of the hereby demised term, keep and maintain in use on the railroad hereby demised an adequate equipment of rolling-stock and other personal property adapted for railroad business; and that the rolling-stock and other railroad equipment in use on the said railroad shall at all times be equal in amount and value to the rolling-stock and other equipment hereby leased; that upon the expiration or sooner determination of the term of this lease

the party of the first part shall be put in possession of rolling stock and other railroad equipment, of the same character and of equal value as that hereby leased to the party of the second part; and that for the better securing to the party of the first part the full performance of this covenant, an inventory of the rolling-stock and other personal property leased shall be forthwith made; and the said rolling-stock and personal property shall be appraised at its fair market value by three appraisers, one to be selected by each of the parties hereto, and the third by the two thus selected, and the said inventory and appraisement shall be identified by the respective signatures of the presidents of the parties hereto, and shall be considered part of this agreement: It being expressly understood, however, That while and so long as the railroad hereby demised is adequately stocked and supplied, as herein covenanted, the party of the second part is to have the right to use the rolling-stock and other equipment hereby leased in its general business over any or all of the roads which it may now or hereafter operate.

Seventh. That the party of the first part shall and will, during the term hereby demised, maintain its corporate existence and organization, and at all times, and from time to time during the said term, when requested by the party of the second part, its successors or assigns, shall and will put in force and exercise each and every corporate power and do each and every corporate act which the party of the first part might now or may at any time hereafter lawfully put in force or exercise, to enable the party of the second part to enjoy, avail itself of, and exercise every right, franchise, and privilege, in respect to the use, management, maintenance, renewal, extension, alteration, or improvement of the premises hereby demised, or intended so to be, or the business to be there carried on, the party of the second part agreeing to indemnify and save harmless the party of the first part against all loss, damage, or liability for such exercise of corporate powers, or performance of corporate acts, when exercised or done at the request of the party of the second part.

Eighth. That the said party of the second part, its successors and assigns, keeping and performing the covenants herein contained on its and their part to be kept and performed, shall and may at all times, and from time to time, peaceably and quietly have, hold, use, and enjoy the demised premises, and every part and parcel thereof, with the appurtenances, without any manner of let, suit, trouble, or hindrance from the party of the first part, its successors and assigns; and the said party of the first part shall and will at any time hereafter execute and deliver such further assurances as may be reasonably required for fully effectuating the objects and purposes of this indenture and the more fully securing unto the party of the second part all the rights and privileges hereinbefore mentioned and granted, or intended so to be.

Ninth. The party of the first part hereby covenants that the premises hereby demised are absolutely free and clear from any and every charge, lien, or incumbrance whatever, except the mortgages hereinbefore referred to, and that the said party of the first part shall

and will fully pay and discharge the principal of the bonds secured by the said mortgages when and as the same shall become due and payable, or procure the same, from time to time, during the term of this lease, to be converted, extended, renewed, or replaced by other bonds or securities bearing interest at the lowest rate attainable, but in no
61 case exceeding the rate of interest now payable under the terms of the said obligations: It being understood and agreed that if a reduction in the rate of interest upon any of the outstanding obligations of the party of the first part shall at any time hereafter be effected, whether by extension of the time of payment of the principal thereof, or by exchange thereof for bonds bearing a less rate of interest, or otherwise howsoever, or if any reduction shall be effected in the rental or other fixed charges now payable by the party of the first part, then the rent payable by the party of the second part shall be reduced by an amount equal to the reduction in the said interest, rentals, or other fixed charges; it being further understood and agreed that the party of the first part shall and will, so soon as the same can be lawfully done, either pay off the principal of the loans known as the "adjustment loan" and the "income loan," respectively, or agree with the holders of the said loans to reduce the rate of interest thereon to the rate of five per cent. per annum, upon condition that the principal shall not be paid off before the maturity thereof.

Tenth. That the party of the second part shall, during the term hereby demised, furnish the president, directors, and treasurer for the time being of the party of the first part, with annual passes or tickets, not exceeding fifteen in number, entitling them to free passage in the passenger trains of the party of the second part over the hereby demised railroads, together with passes to such persons as are entitled thereto under the laws of the State of New Jersey, and to such other persons as may be legally entitled thereto.

Eleventh. That the president, for the time being, of the party of the second part shall be, and he is hereby, constituted and appointed the true and lawful attorney of the party of the first part, for it and in its name, to do and perform whatever act, and to sign, seal, acknowledge, and deliver whatever deed, instrument, or assur-
62 ance may be required to fully perform and carry out each and all of the covenants and agreements herein contained of the party of the first part, according to their true intent and meaning, with full power, from time to time, of making and again revoking appointments of attorneys, one or more, under him for the purposes aforesaid.

Twelfth. That if the said party of the second part shall at any time hereafter sell and convey any portion of the real estate hereinbefore conveyed to it in fee simple (referred to in Schedule "B"), or shall sell or collect the principal of any of the stocks, bonds, or other assets hereinbefre assigned and transferred to it (and referred to in Schedule "C"), which may remain after the payment of the current liabilities and floating indebtedness of the party of the first part, as hereinbefore provided, then the proceeds of such sales or collections shall be applied by the party of the second part, at its option, either

to the improvement of any portion of the premises hereby demised, or to the payment or purchase of any of the bonds or other indebtness of the party of the first part (which bonds or other evidences of indebtedness shall thereupon be cancelled); and in the latter case the annual rental payable by the party of the second part to the party of the first part shall thereafter be decreased by an amount equal to the annual interest payable upon the bonds or either evidences of indebtedness so cancelled.

Thirteenth. That the said party of the second part may, at any time hereafter, with the consent of the party of the first part, which shall be evidenced by its becoming a party to the conveyance, sell and convey the whole or any part of the real estate hereby demised, and not hereinbefore conveyed in fee simple to the party of the second part, which shall, in the opinion of the said party of the second part, be or become unnecessary for the purpose of carrying on business over the railroad hereby demised: Provided, That the proceeds of any such sale shall be applied first to the payment of any
63 incumbrance upon the property so sold, for the payment of which the said party of the first part may be liable, and the surplus, if any, to the payment or purchase of any of the bonds or other indebtedness of the said party of the first part (which bonds or other evidences of indebtedness shall thereupon be cancelled), and thereafter the annual rental payable by the party of the second part to the party of the first part shall be decreased by an amount equal to the annual interest payable upon the bonds so cancelled.

Fourteenth. That if the said party of the second part shall, during the term hereby created, with the approval of the party of the first part, make any additions, extensions, or improvements, to, of or upon the premises hereby demised or their appurtenances, or if the said party of the second part shall pay off any obligations of the party of the first part, which the said party of the first part hereby consents may be done (including herein any payments made by the party of the second part on account of the principal of any car trust certificates hereinbefore referred to, and any arrearages of interest which may hereafter be legally determined to be due and payable by the said party of the first part on the "income loan"), then the said party of the first part shall, upon the request of the said party of the second part, and to the extent of the lawful power of the said party of the first part in the premises, issue to the said party of the second part, at its option, an amount of bonds, bearing interest at a rate not exceeding six per cent. per annum, or shares of the capital stock of the party of the first part equal, at par, to the cost of such additions, extensions, or improvements, or to the amount of such payments, and thereafter the rental payable by the party of the second part to the party of the first part shall be increased by a sum equal to the amount required to pay the interest upon such bonds, or which would then be payable as dividend upon a like amount of the now existing capital stock of the party of the first part at
64 the rate of dividend hereinbefore specified: It being understood and agreed that if the party of the second part shall elect to receive bonds, as herein provided, such bonds shall all be of

one issue, of like tenor, and secured by a mortgage upon the premises hereby demised—such bonds to be issued only to the party of the second part as they may from time to time be required for the purposes aforesaid.

Fifteenth. That in case of any breach of covenant on the part of the party of the second part, its successors or assigns, and sixty days' notice thereof given by the party of the first part, or its assigns, to the party of the second part, if the same can not or shall not be fully compensated within a reasonable time thereafter, then and in such case the party of the first part, or its assigns, may, at its or their option, declare this lease to be terminated, and the agreements herein contained to be rescinded, and may thereupon enter on the demised property and premises as and for condition broken, and repossess themselves as of their old and former estate, and may resume, take, use, and enjoy all the rights, privileges, and franchises hereby demised or granted, as if this agreement had never been made; and this contract shall from thenceforward be deemed and taken to be utterly ended, saving, and excepting the right of the party of the first part, or its assigns, to sue for and recover, by any proceedings at law or in equity, compensation for all damages for or by reason of any breach or breaches of any covenant or covenants on the part of the party of the second part, as fully as if this agreement continued in full force; and saving and excepting the rights of the party of the second part to the previous repayment of all advances made by them for improvements; and also saving and excepting the personal property purchased and paid for by the party of the second part; but no such option of declaring this lease terminated shall be exercised by the party of the first part, or its assigns, while there exists any default under this agreement on their part.

65 In witness whereof, the parties hereto have caused their corporate seals, duly attested, to be hereunto affixed, the day and year first above written.

THE CENTRAL RAILROAD COMPANY
OF NEW JERSEY,
H. S. LITTLE, *President.* [SEAL.]
Attest: SAM'L KNOX, *Sec't'y.*
FRANKLIN B. GOWEN, *Pres't.* [SEAL.]
Attest: ALBERT FOSTER, *Sec't'y.*

Sealed and delivered in the presence of us—
SAM'L KNOX.
ALBERT FOSTER.

66 STATE OF NEW JERSEY, }
Hudson County, } *ss:*

Be it known, that on the 29th day of May, in the year of our Lord one thousand eight hundred and eighty-three (1883), before the subscriber, a master in chancery of the State of New Jersey, personally appeared Samuel Knox, Esquire, who, being by me duly sworn according to law, on his oath, did depose and say: That he is the secre-

tary of The Central Railroad Company of New Jersey, who are, I am satisfied, the grantors named in the foregoing indenture; that he is well acquainted with the common seal of the said company, and that the seal affixed to the foregoing indenture is the common seal of the said company; that the said seal was affixed to the said indenture in pursuance of a resolution of the board of directors of the said company; that Henry S. Little, who is the president of said company, did, by their order, sign, seal and deliver the said indenture, as the voluntary act and deed of said company, in pursuance of the said resolution of the said directors, in this deponent's presence, and that he, the deponent, at the time of the execution thereof, did subscribe his name thereto as a witness.

SAM'L KNOX, *Secretary.*

Subscribed and sworn to, the day and year aforesaid, before me—
JOHN L. CONOVER,
Master in Chancery of New Jersey.

67 STATE OF NEW JERSEY, } *ss.:*
Mercer County, }

Be it remembered that on this 29th day of May, A. D. one thousand eight hundred and eighty-three (1883), before me, the subscriber, a commissioner for the State of Pennsylvania, resident in the State of New Jersey, duly authorized to take the acknowledgment and proof of deeds, personally came and appeared Henry S. Little, Esquire, president of the foregoing-named corporation, The Central Railroad Company of New Jersey, who, being duly sworn according to law, deposes and says: That he was personally present at the execution of the foregoing indenture, and did affix the common corporate seal of the said corporation thereto, and that the seal so affixed is the common or corporate seal of the said company, and that the foregoing indenture was duly sealed and delivered as and for the act and deed of the said The Central Railroad Company of New Jersey, and that the signature of this deponent to the said indenture as president of the said corporation, is of this deponent's own proper handwriting.

H. S. LITTLE.

Sworn to and subscribed before me, this the day and year aforesaid.
Witness my hand and seal.
[SEAL.] S. M. DICKINSON,
Com'r for Penna.

68 STATE OF NEW JERSEY, } *ss.:*
Hudson County, }

Be it remembered that, on this first day of June, A. D. one thousand eight hundred and eighty-three (1883), before me, the subscriber, a commissioner for the State of Pennsylvania, resident in the State of New Jersey, duly authorized to to take acknowledgment and proof of deeds, personally came and appeared Samuel Knox, Esquire,

secretary of the foregoing-named corporation, The Central Railroad Company of New Jersey, who, being duly sworn according to law, deposes and says: That he was personally present at the execution of the foregoing indenture, and saw Henry S. Little, Esquire, president of the said corporation, affix the seal of the said company to the said indenture, and deliver the same as the act and deed of the said company, and that the name of this deponent subscribed to the said indenture as secretary of the said corporation, in attestation of the due execution and delivery of the said indenture, is of this deponent's own proper handwriting.

SAM'L KNOX.

Sworn to and subscribed before me, this the day and year aforesaid.

Witness my hand and seal.

[SEAL.]

GEO. W. CASSEDY,
Com. for Penna. in New Jersey.

69 STATE OF PENNSYLVANIA, } ss:
City of Philadelphia, }

Be it remembered that, on this 31st day of May, A. D. one thousand eight hundred and eighty-three (1883), before me, the subscriber, a notary public in and for the said city, personally came and appeared Franklin B. Gowen, Esquire, president of the foregoing-named corporation, The Philadelphia and Reading Railroad Company, who, being duly sworn according to law, deposes and says: That he was personally present at the execution of the foregoing indenture, and did affix the common or corporate seal of the said The Philadelphia and Reading Railroad Company, and that the foregoing indenture was duly sealed and delivered as and for the act and deed of the said The Philadelphia and Reading Railroad Company, and that the signature of this deponent to the said indenture as president of the said corporation is of this deponent's own proper handwriting.

FRANKLIN B. GOWEN.

Sworn to and subscribed before me, this the day and year aforesaid.

Witness my hand and seal.

[SEAL.]

J. Y. HUMPHREY,
Notary Public.

70 STATE OF PENNSYLVANIA, } ss:
City of Philadelphia, }

Be it remembered that, on this 31st day of May, A. D. one thousand eight hundred and eighty-three (1883), before me, the subscriber, a notary public in and for said city, personally came and appeared Albert Foster, Esquire, secretary of the foregoing-named corporation, The Philadelphia and Reading Railroad Company, who, being duly sworn according to law, deposes and says: That he was personally present at the execution of the foregoing indenture, and saw Frank-

lin B. Gowen, Esquire, president of the said corporation, affix the seal of the said company to the said indenture, and deliver the same as the act and deed of the said company; and that the name of this deponent subscribed to the said indenture as secretary of the said corporation, in attestation of the due execution and delivery of said indenture, is of this deponent's own proper handwriting.

ALBERT FOSTER.

Sworn to and subscribed before me, this the day and year first aforesaid.

Witness my hand and seal.

[SEAL.] J. Y. HUMPHREY,
Notary Public.

71 STATE OF PENNSYLVANIA, } ss.:
City of Philadelphia, }

Be it known that, on the 31st day of May, in the year of our Lord one thousand eight hundred and eighty-three (1883), before the subscriber, a commissioner duly appointed by the Governor of the State of New Jersey for the State of Pennsylvania to take the proof and acknowledgment of deeds to be used and recorded in the State of New Jersey, personally appeared Albert Foster, Esquire, who, being by me duly sworn according to law, upon his oath did depose and say: That he is the secretary of The Philadelphia and Reading Railroad Company, who are, I am satisfied, the grantees named in the foregoing indenture; that he is well acquainted with the corporate or common seal of said company, and that the seal affixed to the foregoing indenture is the corporate or common seal of the said The Philadelphia and Reading Railroad Company; that the said seal was affixed to the said indenture in pursuance of a resolution of the board of managers of the said company; that Franklin B. Gowen, Esquire, who is the president of the said company, did, by their order, sign, seal, and deliver the said indenture as the voluntary act and deed of the said The Philadelphia and Reading Railroad Company, in pursuance of the said resolution of the said board of managers of the said company, in deponent's presence, and that he, the deponent, as secretary of the said company, did, at the time of the execution of the said indenture, subscribe his name thereto as a witness.

ALBERT FOSTER, *Secretary.*

Subscribed and sworn to, at the city of Philadelphia, in the State of Pennsylvania, the day and year aforesaid, before the subscriber.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, at the place and on the day and year aforesaid.

[SEAL.] C. H. KRUMBHAAR,
A Commissioner of Deeds for the State of New Jersey in the State of Pennsylvania, Philadelphia, Pa.

72 *Charter and Supplements of the Central Railroad Company of New Jersey, formerly Somerville and Eastern Railroad Company.*

An act to incorporate the Somerville and Easton Railroad Company, approved February 26, 1847.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That Garret D. Wall, Thomas A. Hartwell, William Thompson, John O. Sterns, John Kean, George H. Pegram, and William P. Robeson, and such other persons as may hereafter be associated with them, shall be, and are hereby, ordained, constituted, and declared to be a body corporate and politic, in fact and in name, by the name of "The Somerville and Easton Railroad Company," and shall be capable of purchasing, holding, and conveying any lands, tenements, goods, and chattels whatsoever necessary or expedient for the objects of this incorporation.

73 2. And be it enacted, That the amount of the capital stock of said company shall be twelve hundred thousand dollars, with liberty to increase the same to two millions of dollars, and shall be divided into shares of fifty dollars each, which shall be deemed personal property, and transferable in such manner as the said corporation shall by their laws direct.

3. And be it enacted, That the above-named persons may open books to receive subscriptions to the capital stock of said corporation at such time or times and place or places as they, or a majority of them, may think proper; and as soon as the same shall be subscribed to give notice for a meeting of the said stockholders to choose nine directors; and such election shall be made at the time and place appointed by such of the stockholders as shall attend for that purpose, either in person or by lawful proxy, each share of the capital stock entitling the holder thereof to one vote, and the said above-named persons, or a majority of them, shall be inspectors of

74 the first election of directors of the said corporation, and shall certify, under their hands, the names of those persons duly elected, and deliver over the subscription books to the said directors; and the time and place of holding the first meeting of the directors shall be fixed by the said persons named in the first section of this act, or a majority of them, and the directors chosen at such meeting, or at the annual elections of said corporation, shall, as soon as may be after every election, choose out of their own number a president; and in case of the death, resignation, or removal of the president or any director, such vacancy or vacancies may be filled for the remainder of the year wherein they may happen by the said board of directors, or a majority of them; and in case of the absence of the president, the said board of directors, or a majority of them, may appoint a president *pro tempore*, who shall have such power and functions as the by-laws of the said corporation shall provide.

4. And be it enacted, That in case it should happen that

75 an election of directors should not be made during the day when, pursuant to this act, it ought to be made, the said corporation shall not, for that cause, be deemed to be dissolved; but

such election may be held at any other time, and the directors for the time being shall continue to hold their office until new ones shall have been chosen in their places.

5. And be it enacted, That five directors of said corporation shall be competent to transact all business of the said corporation, and they shall have power to call in the capital stock of said company by such instalments and at such times as they may direct; and in case of the non-payments of said instalments, or any of them, to forfeit the share or shares upon which such default shall arise; and to make and prescribe such by-laws, rules, and regulations as to them shall appear needful and proper, touching the management and regulation of the stock, property, estate, and effects of the said corporation; and also shall have power to appoint a secretary
76 and so many clerks and servants as to them shall seem meet, and to establish and fix such salaries to them, and also to the president, as the said board shall appear proper.

6. And be it enacted, That the president and directors of the said company be, and they are hereby, authorized and invested with all the rights and powers necessary and expedient to survey, lay out, and construct a railroad or lateral roads from one or more suitable place or places in the village of Somerville northerly in the most direct and feasible route to the Musconetcong Valley, passing to the north or within two miles of the village of Clinton, in the county of Hunterdon; thence passing down the valley of the Musconetcong, or any valley northward, to the valley of the river Delaware; thence up the Delaware to one or more suitable place or places within two miles of the Easton Delaware Bridge, opposite to the village or borough of Easton, in the State of Pennsylvania, with a branch
77 from any convenient point on the route of said road to the village of Belvidere, in the county of Warren, not exceeding one hundred feet in width, with as many sets of tracks and rails as they may deem necessary; and it shall and may be lawful for the said president and directors, their agents, engineers, superintendents, or others in their employ to enter at all times upon all lands and waters, for the purpose of exploring, surveying, leveling, or laying out the route or routes of such railroad or latera land branch roads, and of locating the same, and to do and erect all necessary works, buildings, and appendages thereof, doing no unnecessary injury to private or other property; and when the route or routes of such road or lateral and branch roads shall have been determined upon, and a survey of such route or routes deposited in the office of the secretary of State, then it shall be lawful for the said company, by its officers, agents, engineers, superintendents, contractors, workmen, and other persons in their employ to enter
78 upon, take possession of, hold, have, use, occupy, and excavate any such lands, and to erect embankments, bridges, ferries, and all other works necessary to lay rails, and to do all other things which shall be suitable or necessary for the completion or repair of the said road or roads, subject to such compensation as is hereinafter provided: Provided always, That the payment, or tender of the payment, of all damages for the occupancy of lands through which the

said railroad or railroads may be laid out, be made before the said company, or any person under their direction or employ, shall enter upon or break ground in the premises, except for the purpose of surveying and laying out said road or roads, unless the consent of the owner or owners of such lands be first had and obtained: Provided, nevertheless, That the said road or lateral roads shall in no way impair the chartered rights or interfere with the Camden and Amboy Railroad and Transportation Company and Delaware
79 and Raritan Canal Company in the transportation of passengers or merchandise between Philadelphia and New York, whereby to diminish the revenue of this State, under the penalty of a forfeiture of its chartered rights and franchises.

7. And be it enacted, That when the said company, or its agents, cannot agree with the owner or owners of such required land or materials for the use or purchase thereof; or when, by reason of the legal incapacity or absence of such owner or owners, no such agreement can be made, a particular description of the land or material so required for the use of the said company in the construction of the said road shall be given in writing, under the oath or affirmation of some engineer or proper agent of the company, and also the name or names of the occupant or occupants, if any there be, and of the owner or owners, if known, and their residence, if the same can be ascertained, to one of the justices of the supreme court of this State, who shall cause the said company to give notice
80 thereof to the persons interested, if known and in this State; or, if unknown and out of this State, to make publication thereof, as he shall direct, for any term not less than six days, and to assign a particular time and place for the appointment of the commissioners hereinafter named, at which time, upon satisfactory evidence to him of the service or publication of such notice aforesaid, he shall appoint, under his hand and seal, three disinterested, impartial, and judicious freeholders, not resident in the county in which the lands or materials in controversy lie, or the owners reside, commissioners to examine and appraise the said land or materials, and to assess the damages, upon such notice to be given to the persons interested as shall be directed by the justice making such appointment, to be expressed therein not less than six days; and it shall be the duty of the said commissioners (having first taken and subscribed an oath or affirmation before some person duly authorized to administer an oath faithfully and impartially to examine the matter in question and
81 to make a true report, according to the best of their skill and understanding), to meet at the time and place appointed and proceed to view and determine the said land or materials, and to make a just and equitable estimate or appraisement of the value of the same, and assessment of damages as shall be paid by the said company for such lands, or materials and damages aforesaid, which report shall be made in writing under the hands and seals of the said commissioners, or any two of them, and filed within ten days thereafter, together with the aforesaid description of the land or materials, and the appointment and oaths or affirmations aforesaid, in the

clerk's office of the county in which the land or materials are situate, to remain of record therein; which report, or a copy thereof, certified by the clerk of said county, shall at all times be considered as plenary evidence of the right of the said company to have, hold, use, occupy, possess, and enjoy the said land or materials, or of the said
82 owner or owners to recover the amount of said valuation, with interest and costs, in an action of debt in any court of competent jurisdiction, in a suit to be instituted against the company if they shall neglect or refuse to pay the same for twenty days after demand made of their treasurer, and shall from time to time constitute a lien upon the property of the company in the nature of a mortgage; and the said justice of the supreme court shall, on application of either party, and on reasonable notice to the others, tax and allow such costs, fees, and expenses to the justice of the supreme court, commissioners, clerks, and other persons performing any of the duties prescribed in this section of this act, as they or he shall think equitable and right, and to order and direct by whom the same shall be paid under the circumstances of the case.

8. And be it enacted, That in case the said company, or the owner or owners of the said land or materials, shall be dissatisfied with the report of the commissioners named in the preceding section, and
83 shall apply to the justices of the supreme court at the next term after the filing of the said report, the court shall have the power, upon good cause shown, to set the same aside and thereupon to direct a proper issue for the trial of the said controversy to be formed between the said parties, and to order a jury to be struck and a view of the premises or materials to be had, and the said issue to be tried at the next circuit court to be holden in the said county, upon the like notice and in the same manner as other issues in the said court are tried; and it shall be the duty of the said jury to assess the value of the said land or materials and damages sustained, and if they shall find a greater sum than the said commissioners shall have awarded in favor of the said owner or owners, then judgments thereon, with costs, shall be entered against the said *said* company and execution awarded therefor; but if the said jury shall be applied for by the said owner or owners, and shall find the same or a less
84 sum than the company shall have offered or the said commissioners awarded, then the said costs to be paid by said applicant or applicants, and either deducted out of the said sum *sum* found by the said jury, or execution awarded therefor as the court shall direct: Provided, That such application shall not prevent the company from taking the said land or materials upon the filing of the aforesaid report.

9. And be it enacted, That it shall be the duty of the said company to construct and keep in repair good and sufficient bridges or passages over or under the said railroad or roads where any public or other road shall cross the same, so that the passage of carriages, horses, and cattle on the said road shall not be impeded thereby; and also, where the said road shall intersect any farm or lands of any individual, to provide and keep in repair suitable wagon ways over or under said road, so that he may pass the same.

10. And be it enacted, That the president and directors of
85 the said company shall have power to have constructed or to purchase with the funds of the company, and to place on any railroad constructed by them, all machines, engines, wagons, carriages, or vehicles for the transportation of persons or any species of property thereon as they may think reasonable, expedient, or right: Provided, They shall not charge more than at the rate of six cents per mile per ton for the transportation of property on the said road or roads, or four cents per mile for carrying each passenger on said railways in the carriages of the company, or three cents per mile for each ton of property transported, or two cents per mile for each passenger carried on said railways in the carriages of others, and three cents per mile for each empty carriage; and that the railroad or roads, and their appendages, and the land over which the same shall pass, and all the works and improvements, steam engines, carriages, and all other property whatsoever belonging to the said company, at any time or times, are hereby
86 vested in the said company incorporated by this act, and their successors and assigns during the continuance of this act.

11. And be it enacted, That that the president and directors shall, within one year after the said railroad shall have been completed, declare and make such dividends as they may deem prudent and proper of the net profits thereof, and shall, in like manner, semi-annually thereafter declare such dividends and pay the same to the stockholders of the said company, in proportion to the amount of shares held by them, respectively, as they may deem prudent and proper.

12. And be it enacted, That if any person shall wilfully impair, injure, destroy, or obstruct the use of any railroad enjoyed under the provisions of this act, or any of their necessary works, wharves, bridges, carriages, or machines, such person or persons so offending shall forfeit and pay to the said company the sum of fifty dollars, to be by them recovered in any court having competent
87 jurisdiction in an action of debt; and further, shall be liable for all damages.

13. And be it enacted, That the said company may have and hold real estate at the commencement and termination of said road or roads at Somerville and the Delaware river, and at intermediate depots upon the line of the said road, not exceeding five acres at each place, and may erect and build thereon such houses, warehouses, machine shops, and other buildings and improvements, as they may deem expedient for the safety of property, and the construction of cars, carriages, steam engines, and for other necessary uses; and shall also have the privilege and authority to erect, build, and maintain, at the Delaware river, or within thirteen miles of the borough of Easton, such wharves, piers, bridges, and other facilities as they may think expedient and necessary for the full enjoyment of all the benefits conferred by this act, which
88 said lands shall be obtained in the manner provided for in the seventh section of this act.

14. And be it enacted, That as soon as the railroad, with its appendages, shall be finished so as to be used, the president and treasurer of the said company shall file, under oath or affimation, a statement of the amount of the cost of the said road, including all expenses, and the amount of all purchases made by virtue of this act, in the office of the secretary of this State, and annually thereafter the president and treasurer of the said company shall, under oath or affirmation, make a statement to the Legislature of this State of the proceeds of said road, until the net income of said road shall amount to six per centum upon the amount of its costs; and as soon as the net proceeds of said railroad shall amount to six per centum upon its cost the said corporation shall pay to the treasurer of this State a tax of one-half of one per centum on the cost of said road, to be paid annually thereafter on the first
89 Monday of January of each year: Provided, That no other tax or impost shall be levied or assessed upon the said company.

15. And be it enacted, That the said corporation shall have power to borrow such sum or sums of money from time to time as shall be necessary to build, construct or repair said road, and furnish the said corporation with all the necessary engines and machinery for the uses and objects of the said company, and to secure the repayment thereof by bond and mortgage, or otherwise on the said road, lands, privileges, franchises, and appurtenances of or belonging to said corporation, at a rate of interest not exceeding seven per cent. per annum.

16. And be it enacted, That any time after the expiration of fifty years from the completion of the said road the Legislature of this State may cause an appraisement of the said road, and the appendages thereof to be made by six persons, three of whom shall be appointed by the chief justice of this State for the time
90 being, the remaining three by the company, who, or a majority of them, shall report the value thereof to the Legislature within one year from the time of their appointment; or, if they cannot agree, they shall choose a seventh, who, with the aforesaid six, shall report as aforesaid; or in case the said company shall neglect or refuse to appoint the said three persons on their part for two months after their said appointment by the said chief justice, then the three persons so appointed by him shall proceed to make such appraisement, which shall be binding on the said company; or in case the said six commissioners shall be appointed as aforesaid, and they cannot agree upon the seventh man, then upon two weeks' notice to the said company the said chief justice shall appoint such seventh man as aforesaid, to make such appraisement as aforesaid, and thereupon the State shall have the privilege for three years of taking the said road upon the payment to the company of the
91 amount of the said report within one year after electing to take said road, which report shall be filed in the office of the secretary of this State, and the whole property and interest of said road and the appendages thereof shall be vested in the State of New Jersey upon payment of the amount so reported to the said com-

pany; and that it shall be the duty of the president of the company to lay before the Legislature, under oath or affirmation, when they shall so request, a full and fair statement of the costs of the said road, and of all the receipts and disbursements of the company: Provided always, That the aforesaid valuation shall be made without reference to the receipts or disbursements of the company, or advance of the stock; and the said valuation shall in no case exceed the first cost of valuation of said road, with the lands and appendages thereof.

17. And be it enacted, That if the said railroad shall not be completed and in use at the expiration of ten years from the
92 fourth day of June next ensuing, that then and in that case this act shall be void.

18. And be it enacted, That the Legislature shall have the right to subscribe for the stock of the said company to the amount of twenty-five thousand dollars, at any time before or within twelve months after the said road or roads are completed.

19. And be it enacted, That this act shall be deemed and taken as a public act, and shall at all times be recognized as such in all courts and places whatsoever, and shall take effect immediately after the passage thereof.

A supplement to an act entitled "An act to incorporate the Somerville and Easton Railroad Company," passed February twenty-sixth, eighteen hundred and forty-seven, approved February 22d, 1849.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That it shall and may be lawful for the said The Somerville and Easton Railroad Company to purchase the
93 railroad from Somerville, in the county of Somerset, to the Sound, in the township of Elizabeth, in the county of Essex, constructed under and by virtue of an act entitled "An act to incorporate the Elizabethtown and Somerville Railroad Company," passed February ninth, eighteen hundred and thirty-one.

2. And be it enacted, That if the said purchase can be made in such manner that for the payment or part payment of the purchase-money for the said railroad the stock of the Somerville and Easton Railroad Company will be taken therefor, then it shall and may be lawful for the said last-named company to issue so much of their capital stock now authorized by their said act of incorporation to be issued as shall be required for that purpose.

3. And be it enacted, That when the said purchase shall be made the railroad so purchased shall be and become a part of the railroad authorized to be constructed by the Somerville and Easton
94 Railroad Company, and in its further construction and completion, maintenance, use, and enjoyment shall be regulated and governed by the provisions of the charter of the last-named company, and for that purpose all and every provision of the act entitled "An act to incorporate the Somerville and Easton Railroad Company" shall extend and be applicable to the railroad so purchased, in every respect as if the same had been authorized to be

made, and had been made, under the said last-mentioned act; and from thence forth the said The Somerville and Easton Railroad Company shall be known by the name of The Central Railroad Company of New Jersey; and all suits now pending in any court of the State of New Jersey against the said company shall proceed to final judgment and determination against the said company by the name of the Somerville and Easton Railroad Company, and final process may issue thereupon against the Central Railroad Company of New Jersey, the same as if the said suit
95 had been originally commenced against the Central Railroad Company of New Jersey: Provided, That nothing in this act contained shall in anywise affect any right whatever, either at law or in equity, of any stockholder or other person in or any claim or demand against the Elizabethtown and Somerville Railroad Company, or any lien whatever upon the said railroad, or upon any property which by virtue of this act shall be transferred or conveyed: And provided further, That upon such purchase as aforesaid being completed the said The Central Railroad Company of New Jersey shall thereby become responsible for all debts contracted by the Elizabethtown and Somerville Railroad Company since the foreclosure of the mortgage or mortgages under which the present stockholders of the said last-named company claim to hold the said railroad, and shall be liable therefor in law and equity in like manner as if the said debt had been contracted by the Somerville and
96 Easton Railroad Company; Provided, also, That the said purchase shall be made with the consent of the last-mentioned stockholders.

4. And be it enacted, That the passage of this act, or any matter or thing herein contained, shall not be held, deemed, or construed in any wise to affect or prejudice the debts, claims, or demands of any person or persons being creditors or claiming to be creditors of the said The Elizabethtown and Somerville Railroad Company, but that all such persons shall have the full benefit of all action and actions, process and processes, at law and in equity for the recovery of their said debts, claims, and demands against the said The Elizabethtown and Somerville Railroad Company, heretofore commenced or hereafter to be commenced, as they might or could have had if this act had not been passed; and that any process or processes whatsoever sued or to be sued out of any court or courts may be levied upon any officer of the said The Central Rail-
97 road Company of New Jersey in the same manner as if the said The Central Railroad Company of New Jersey were the defendants therein, and that such service shall be deemed valid and lawful; and that upon the recovery of any judgment or judgments, decree or decrees, therein against the said The Elizabethtown and Somerville Railroad Company, execution or executions, or other process or processes for the satisfaction of any judgment or judgments, decree or decrees, shall issue for the sale of the said railroad, and any other property purchased by the said The Somerville and Easton Railroad Company from the said The Elizabethtown and Somerville Railroad Company, "or for the sequestration of the tolls,

issues, and profits thereof, as the plaintiff or plaintiffs, complainant or complainants, in any such judgment or judgments, decree or decrees, might have had against the said property if this act had not been passed and such purchase had not been made, but not from any other property of the said The Somerville and Easton Railroad Company, or of the said The Central Railroad Company of New Jersey,
98 and that such execution or executions, process or processes may issue either against the said The Elizabethtown and Somerville Railroad Company," or against the said The Central Railroad Company of New Jersey; and that the said The Central Railroad Company of New Jersey shall have the full and perfect right and benefit to use and have all pleas, defences, and protection at law and in equity against any suit or suits, action or actions brought or to be brought, prosecuted or to be prosecuted, and against any final process issued upon any judgment or decree against the said The Elizabethtown and Somerville Railroad Company or the said The Central Railroad Company of New Jersey, as the said The Elizabethtown and Somerville Railroad Company, or any person under whom the said The Central Railroad Company of New Jersey claim to hold the said purchased property, could or might have had if this act had not been passed.

5. And be it enacted, That it shall and may be lawful for
99 the said company to purchase and hold lands at the termination of the said railroad at the sound in the township of Elizabeth, in the county of Essex, not to exceed twenty acres, for the purpose of erecting thereupon such depots, buildings, and shops, and such piers, wharves, and other fixtures as may be necessary for the purposes of the said company, and for the accommodation and transportation of passengers and merchandise: Provided, That the aforesaid lands and improvements shall be subject to the same assessment and payment of township and county taxes as other real estate is or shall by law be subjected to.

6. And be it enacted, The Governor, the chancellor, the justice of the supreme court, and the judges of the court of errors of this State, when travelling for the purpose of discharging the duties of their offices, and the members of both houses of the Legislature of this State, during it annual or other sessions, shall pass and repass over the said railroads in the cars thereof free of charge.

7. And be it enacted, That this act shall take effect immediately.

100 NOTE.—The purchase of the Elizabethtown and Somerville railroad, and consequent change of name of the company to the Central Railroad Company of New Jersey, dates from the 1st of April, 1849.

A further supplement to an act entitled "An act to incorporate the Somerville & Easton Railroad Company," passed February 26th, eighteen — forty-seven; approved March 17th, 1854.

1st. Be it enacted by the Senate and General Assembly of the State of New Jersey, That it shall be lawful for the Central Railroad Company of New Jersey to erect, build, or extend such wharves,

docks, or piers opposite to and adjoining any land owned by them in the township of Elizabeth as far in the sound or bay as may be necessary for the purpose of facilitating tran-shipment of coal and their general transporting business, and also to have and hold whatever wharves, piers, lands, or lots, steamboats, sailing vessels, and such other facilities in the city of New York or elsewhere as may be necessary for the management of their business.

101 2. And be it enacted, That the said company may from time to time, with the assent of a majority in interest of the stockholders, increase their capital stock to any sum not exceeding five millions of dollars, and may also change the value of shares by issuing one share of the value of one hundred dollars in place of every two shares of the value of fifty dollars.

3. And be it enacted, That it shall be lawful for the said company to purchase or lease or operate any railroad which may connect with or intersect with their road, or to guarantee the bonds of such company or to consolidate the stock of such company with their own, on terms to be mutually agreed on: Provided, Such purchase or consolidation shall not be made without the assent of three-quarters in interest of the stockholders: And provided also, If any stockholder or stockholders shall refuse his or their assent, or if, by reason of absence or legal inability, such assent cannot be obtained, application may be made by such stockholder or stockholders

102 within three months from the time that the purchase or consolidation shall take effect to one of the justices of the supreme court of this State for the appointment of three disinterested, impartial persons, well acquainted with the value of railroad property, as commissioners to appraise the value of the shares held by such stockholder or stockholders: Provided, The appraisement shall in no case be less than the par value thereof; whereupon such proceedings shall be had as are provided in section seven of the act of incorporation for appraising and taking lands, so far as the same is applicable.

4. And be it enacted, That when such purchase or consolidation shall have been made, the railroad so purchased or consolidated, if in this State, shall be and become a part of the railroad authorized to be constructed by the act of incorporation; and in its further construction and completion, maintenance, use, and enjoyment shall be regulated and governed by the provisions of the said charter and its supplements, and for that purpose all and every provision

103 of the said act of incorporation and supplements thereto shall extend and be applicable to the railroad so purchased or consolidated in every respect as if the same had been authorized to be made, and had been made, under the said act to which this is a supplement.

5. And be it enacted, That the proviso in section ten of the act of incorporation shall be held to apply only to property usually freighted by the ton, and to passengers carried more than one mile.

6. And be it enacted, That the provisions of article six of the act of incorporation shall apply to land exceeding one hundred feet in width in any places where from the depth of the excavation or the

height of the embankment it is necessary to take more land for the slopes and protection of the side banks of the said railroad or its branches; in which case so much land as may be necessary for the purpose, and no more, shall be taken.

7. And be it enacted, That it shall be lawful for the said
104 company to change or alter the location of their said railroad, or to locate new lines when additional tracks shall be required, at any point or points between Philipsburgh and Elizabethport, not varying in any case over one mile from the line as located and filed, after filing in the office of the secretary of this State a survey of such location as varied from the original location, and shall be invested with all the powers and privileges, and subject to all the conditions and restrictions in taking possession of and using the land required, which, by their act of incorporation, they might exercise, and to which they are subject, respecting lands required for the road: Provided, That in all cases where the said company shall locate any new line or lines of tracks within the township of Bridgewater, and shall not be the owners of all the land lying between the old line or lines and the new line or lines that may be located as aforesaid, the old lines shall be vacated, and the land upon and over which
105 the same have been constructed shall revert to the original owners thereof, so soon as such new lines shall be completed and used ready for the use of said company.

8. And be it enacted, That it shall be the duty of the treasurer of said company, on the first Monday of January of each and every year hereafter, to pay to the treasurer of this State a tax of one-half of one per centum upon the cost of said road, as shown by the annual report of such cost, made the year preceding the said first Monday of January in which such payment as aforesaid shall be made: Provided, That no other tax or impost shall be levied or assessed upon the said company, and section fourteen of the act of incorporation is hereby repealed.

9. And be it enacted, That if the said company shall within six months from the passage of this act file in writing their assent to and acceptance of all the provisions of this act, then the said act shall take effect immediately thereafter, but in case the said company shall refuse or neglect so to do within the time specified,
106 then this act shall be null and void.

NOTE.—The acceptance of this act was duly filed within six months.

A further supplement to an act entitled "An act to incorporate the Somerville and Easton Railroad Company," passed February twenty-sixth, eighteen hundred and forty-seven; approved February 23d, 1860.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That it shall and may be lawful for the Central Railroad Company of New Jersey to extend their railroad from some point in their track, in the city of Elizabeth, to some point or points on New York bay, in the county of Hudson, at or south of Jersey

City, and for that purpose, in its construction and completion, maintenance, use, and enjoyment, all and every provision of the act, entitled "An act to incorporate the Somerville and Eastern Railroad Company," and of the several supplements thereto, shall extend and be applicable to the railroad now authorized to be constructed
107 in every respect as if the same had been originally authorized under the said act to which this is a supplement.

2. And be it enacted, That the said railroad company shall construct a suitable bridge over any navigable water that they may cross, with pivot draw, with two openings, each of seventy-five feet in width, at right angles to the main channel, located at a point convenient for navigation; and for the safety of persons navigating the said river or water the said company shall cause to be kept a red light at each outer side of said draw and a white light on each inner side of said draw, which shall be lighted every evening before it grows dark and kept lighted till daylight; and shall keep or cause to be kept at such bridge a careful person or persons to open such draw for the free passage of vessels with standing masts; and for each and every wilful neglect to light the said lamp or lamps for one night, or to open said draw, the company shall for-
108 feit and pay the sum of fifty dollars, to be recovered with costs in any court having jurisdiction thereof, by any person who shall sue for the same within six months from the time of such neglect.

3. And be it enacted, That it shall be the duty of said company, for the accommodation of commuters and the local travel, to continue their early morning and evening trains from and to Somerville and New York, at least as early in the morning as seven o'clock from Somerville, and as late in the evening from New York as four and a half o'clock.

4. And be it enacted, That nothing herein contained shall be construed to prejudice the claims of riparian shore owners, and that in constructing their said railroad in the county of Hudson they shall not cross the Jersey City and Bergen Point Plank road more than once, and shall not construct said road nearer than one thousand feet from a parallel line with the said plank road, except where it may cross the same.

109 5. And be it enacted, That this act shall take effect immediately.

A further supplement to an act entitled "An act to incorporate the Somerville and Easton Railroad Company," passed February twenty-sixth, 1847; approved February 23d, 1863.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the railroad authorized in the act to which this is a supplement may lawfully be constructed four hundred feet from, and not nearer to the plank road, at the division line of the lands of John R. Vreeland and Geo. R. Vreeland, and five hundred feet from and not nearer to the said plank road at the New York Bay Cemetery, and six hundred feet from and not nearer to said plank road at Geo. Vreeland's road, and ten hundred feet from and

not nearer to said plank road in the line between Stephen Vreeland and Albert Brown's, and said railroad shall not be constructed at any point south of the last-mentioned line nearer than nine
110 hundred feet from the said plank road, except for the purpose of crossing the same, and that said railroad may be constructed at the distance of nine hundred feet at any point south of said last-mentioned line.

2. And be it enacted, That all acts and parts of acts conflicting with this act be, and the same are hereby, repealed.

3. And be it enacted, That this act shall take effect immediately.

A further supplement to an act entitled "An act to incorporate the Somerville and Easton Railroad Company," passed February twenty-sixth, eighteen hundred and forty-seven; approved March 11th, 1863.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the Central Railroad Company of New Jersey may, from time to time, with the assent of a majority in interest of the stockholders of said company, increase their capital stock to any sum not exceeding three millions of dollars in addition to
111 the present authorized amount of capital, making total capital $8,000,000.

2. And be it enacted, That this act shall take effect immediately.

A further supplement to an act entitled "An act to incorporate the Somerville and Easton Railroad Company," passed February twenty-sixth, eighteen hundred and forty-seven; approved April 5, 1865.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the Central Railroad Company of New Jersey may, from time to time, with the assent of a majority in interest of the stockholders of said company, increase their capital stock to any sum not exceeding three millions of dollars in addition to the present authorized amount of capital, making total capital $11,000,000.

2. And be it enacted, That this act shall take effect immediately.

A further supplement to an act entitled "An act to incorporate the Somerville and Easton Railroad Company," passed Feb-
112 ruary twenty-sixth, eighteen hundred and forty-seven; approved April 6th, 1865.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That it shall be lawful for such corporation of the State of Pennsylvania as has acquired or may acquire the requisite power from the said State to hold the title to such bridge, and to the requisite offices at the end thereof, in joint ownership, or in such manner as may be agreed upon with the said The Central Railroad Company of New Jersey.

2. And be it enacted, That nothing in this, or the act of which this is a supplement, shall be construed to authorize the construction of any bridge which shall destroy or materially injure any of the works of the Morris Canal and Banking Company, or the ferry

of the said company across the Delaware river, unless by agreement between the said companies or parties authorized to build the said bridge and the Morris Canal and Banking Company; and, further, to protect as far as practicable the rights aforesaid, and also the rights of navigation and the interests of the public, the location of the piers and abutments of the said bridge shall, before the same shall be constructed, be approved by three suitable and disinterested commissioners, who shall be appointed by the chancellor and the chief justice of this State.

3. And be it enacted, That it shall be lawful for any other railroad or canal corporation of this State to use the said bridge for the transportation of passengers and freight upon and over it, and to make such connections by tracks, switches, turnouts, or otherwise as may be requisite to give them free use of said bridge for the conveyance of passengers or freight to or upon or over said bridge and to its connections on either side of the river Delaware: Provided, That the corporation or corporations using said bridge shall pay to the said The Central Railroad Company of New Jersey a sum not exceeding three cents per ton for each ton of merchandise or freight, and five cents per passenger for each passenger transported over said bridge.

A further supplement to an act entitled "An act to incorporate the Somerville and Easton Railroad Company," passed February twenty-sixth, eighteen hundred and forty-seven; approved March 5th, 1866.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That in all cases where land shall be taken by commissioners, under provisions of sections seven and eight of the act to which this is a supplement, where the owner or owners are either unknown or under any legal disability, the amount of the award shall be paid into the court of chancery before the company shall proceed to take possession.

2. And be it enacted, That the Central Railroad Company of New Jersey may, from time to time, with the assent of a majority in interest of the stockholders of said company, increase their capital stock to any sum not exceeding four millions of dollars in addition to the present authorized amount of capital, making total capital $15,000,000.

3. And be it enacted, That this act shall take effect immediately.

"An act respecting the Central Railroad Company of New Jersey and the Newark and New York Railroad Company," approved March 17th, 1870.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the said The Central Railroad Company of New Jersey be, and is hereby, authorized to survey, lay out, and construct a branch railroad from any point on the track of their road east of Broad street, in the city of Elizabeth, to connect with the railroad of the said The Newark and New York Railroad Company at some point east of the intersection of St. Charles and Ferry streets, in the

city of Newark, the said branch to be wholly easterly of a straight line connecting said points and wholly easterly of the newly-located branch of the New Jersey railroad, commonly known as the
116 "cut-off line," as the same is located on a map now on file in the office of the secretary of the State, and in the survey, location, and construction thereof, and in its maintenance, use, and enjoyment all the provisions of the act entitled "An act to incorporate the Somerville and Easton Railroad Company," passed February twenty-sixth, eighteen hundred and forty-seven, and the supplements thereto, shall extend and be applicable to the said branch road in every particular.

2. And be it enacted, That the third and fourth sections of the act entitled a further supplement to an act entitled "An act to incorporate the Somerville and Easton Railroad Company," passed February twenty-sixth, eighteen hundred and forty seven, which said supplement was passed March seventeenth, eighteen hundred and fifty-four, shall be, and are hereby, made applicable in relation to the Newark and New York Railroad Company, anything in any of the provisions of the act incorporating the said The Newark
117 and New York Railroad Company to the contrary notwithstanding; and all the provisos in the seventh section of the last-named act be, and the same are hereby, repealed; but the said company shall, through said cut in the city of Bergen, build and maintain along their railroads first-class wooden picket fence, worth at least two dollars per lineal foot; and that the words "all of whom shall be residents of this State" in the fourth section of the said act be, and the same are hereby, stricken out: Provided, however, That nothing in this act contained shall grant, or be construed to grant, any right, title, estate, or easement, or power, authority, or franchise, or privilege of any kind in or over any lands now under tide water, or that they were heretofore under tide water, or to import that any claim, matter, or thing in any acts herein referred to, or referred to in any of the acts herein referred to, did grant any title, right,
118 estate, or easement, or power, authority, or franchise, or privilege of any kind in or over any lands now under tide water, or that were heretofore under tide water, or be construed to in any way affect the claim of the State of New Jersey to the rent mentioned in the act entitled "An act to lease certain lands of the State to the Newark and New York Railroad Company," and to enlarge the powers of said company: And provided also, That the provisions of the sixth section of the act entitled a supplement to the act entitled "An act to incorporate the Newark and New York Railroad Company," approved March first, eighteen hundred and sixty-six, which said supplement was approved February twenty-first, eighteen hundred and sixty-seven, shall extend and be applicable to the said branch road in every particular, anything in any of the provisions of this act or of the acts incorporating the Central Railroad Company of New Jersey, the Somerville & Easton Railroad
119 Company, and the Newark and New York Railroad Company, and the several supplements to each of said railroads, to the contrary notwithstanding.

3. And be it enacted, That as soon as the said railroad, or any part of it, is in operation, the president of the said company shall file, under oath or affirmation, a statement of the amount of the cost of the said railroad, including equipments, appendages, and all expenses in the office of the secretary of State, and annually thereafter, on the first Monday in January of each year, he shall, under oath or affirmation, make a statement to the secretary of the State of the cost, equipments, appendages, and expenses of said road; and after the said railroad, or any part thereof, shall be in operation, the said corporation shall pay to the treasurer of this State a tax of one-half of one per centum on the cost, equipments, and appendages of said road, to be paid annually thereafter on the first Monday in January of each year, and such other taxes as may be assessed from
120 time to time by a general law applicable to all railroads over which the Legislature shall have power for that purpose at the time of the passage of such law or laws; and until the said railroad or any part thereof shall be in operation, the said corporation shall be regularly assessed and pay tax for the value of its real estate, including improvements thereon, and personal property, as now taxed in the city or cities, township or townships, wherein it lies, at the same time and rate, and in the same manner for the same purpose and by the same person or persons, as other taxes are assessed in said city or cities, township or townships:

Provided, That no other tax or impost shall be levied or assessed upon said company.

4. And be it enacted, That this shall be deemed a public act, and shall take effect immediately.

A further supplement to an act entitled "An act to incorporate the Somerville and Eastern Railroad Company," passed February
121 twenty-sixth, one thousand eight hundred and forty-seven; approved March 28th, 1872.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the Central Railroad Company of New Jersey may increase their capital stock five millions of dollars, making total capital $20,000,000, in addition to the present authorized amount, using the same to take up the scrip for a similar amount issued with the assent of a majority in interest of the stockholders of said company.

2. And be it enacted, That it shall be lawful for the said company to construct a branch railroad from any point in the Newark and New York railroad east of the Passaic river to a connection with the Morris and Essex railroad in the county of Hudson, and also to construct a branch railroad connecting with the Newark and New York railroad, on or at any point west of the Briell farm, to a connection with the Morris and Essex railroad, in the county of Essex;
122 and for the location, construction, and enjoyment of such branches all the provisions of the charter of the said company and its supplements shall be applicable: Provided, however, That if either of the said branches shall cross the tracks of the New Jersey Railroad and Transportation Company such crossing shall

not be at grade: And provided also, That the said last-mentioned branch railroad shall not cross any public street in the city of Newark on grade without the consent of the common council of said city.

3. And be it enacted, That this act shall take effect immediately.

A further supplement to an act entitled "An act to incorporate the Somerville and Easton Railroad Company," passed February twenty-sixth, one thousand eight hundred and forty-seven; approved March 21st, 1874.

Whereas the Central Railroad Company of New Jersey are the lessees, in perpetuity, of the railroad, branches, and works of
123 the Lehigh Coal and Navigation Company, in the State of Pennsylvania, and, in order to secure a paying business for their said railroads and works, it may be advisable and necessary that the said The Central Railroad Company of New Jersey should guarantee the payment of such bonds as may be issued from time to time by companies owning or working coal land adjacent to any of the said roads or works: Therefore

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That it shall and may be lawful for the Central Railroad Company of New Jersey, a majority in interest of their stockholders consenting thereto, to guarantee the payment of the bonds of any coal company or companies owning or working coal lands along the line of or adjacent to any of the railroads, branches, or works in the State of Pennsylvania, so held by lease by the said company, and in which lands the said company may or may
124 not have an interest.

2. And be it enacted, That the said The Central Railroad Company of New Jersey may from time to time, with the assent of a majority in interest of the stockholders of said company, increase their capital stock to any sum not exceeding ten millions of dollars in addition to the present authorized amount of capital.

3. And be it enacted, That this act shall take effect immediately.

(Endorsed:) In chancery of N. J. Between Alfred Mills & John H. Lidgerwood, surviving ex. of Stephen Vail, dec'd, compl'ts, and The Central Railroad Comp'y of N. J., The Philadelphia & Reading Railroad Company, Henry S. Little, Franklin B. Gowen & others, def'ts. Bill, &c. H. C. Pitney, sol'r. Filed Aug. 28, 1883.

125 *Answer of Defendants.*

In Chancery of New Jersey.

Between ALFRED MILLS and JOHN H. LIDGERWOOD, Surviving Executors of Stephen Vail, Deceased, Complainants,

and

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, THE PHILADELPHIA AND READING RAILROAD COMPANY, and others, Defendants.

} On Bill.

The joint and several answer of the defendants, The Central Rail-

road Company of New Jersey, The Philadelphia and Reading Railroad Company, Franklin B. Gowen, Joshua B. Lippincott, Henry Lewis, Isaiah V. Williamson, Edward C. Knight, Joseph B. Altemus, Henry S. Little, John Kean, and Robert Garrett, to the bill of complaint of Alfred Mills and John H. Lidgerwood, surviving executors of Stephen Vail, deceased, complainants.

The defendants admit the allegations and statements contained in paragraphs one and two of the bill of complaint to be true.

And these defendants, further answering, show that the allegation in the third paragraph of the bill, to wit, that the said Stephen Vail was one of the original corporators of the Central Railroad Company of New Jersey, and was for many years its president, or one of its original projectors, is untrue; he was not one of the original corporators, and was never its president.

126 That said Stephen Vail was president of the Elizabethtown and Somerville Railroad Company, but had no connection with it until after its reorganization upon a sale upon the foreclosure of a mortgage; that he was president when said railroad was sold to the Somerville and Easton Railroad Company; that he was elected a director of the Somerville and Easton Railroad Company May 1st, 1848, and continued a director under its change of name to the Central Railroad Company of New Jersey, April 23d, 1849; that he was again elected a director May 1st, 1849; that he was present at a meeting of the stockholders of the Elizabethtown and Somerville Railroad Company and of the Somerville and Easton Railroad Company, held March 22d, 1849, and all his votes, to wit, seven hundred and fifty shares of stock, were cast in favor of the supplement by which the Elizabethtown and Somerville railroad was sold to the Somerville and Easton Railroad Company, and the name of the last company changed to "The Central Railroad Company of New Jersey;" that said Stephen Vail, at the next election, to wit, May 1st, 1850, and it being the first election of the company under the name of "The Central Railroad Company of New Jersey," declined being a candidate, and at his request his son, George Vail, was elected in his place, and continued a director until May, 1854, when Alfred Vail, brother of said George Vail, was elected and continued a director, until his death in 1858.

That the said Stephen Vail, up to the time of his death, July 12th, 1864, took an active interest in all the affairs of the Central Railroad Company of New Jersey, and approved the action of its directors in all the schemes by which its original business was enlarged.

They admit that the portions of the will of Stephen Vail, deceased, set forth in paragraph four of the bill of complaint, are true extracts from said will; but whether the same was changed by any other parts of the said will, or the legal effects of the said will when taken as a whole as to their bearing upon the matters in con-

127 troversy, the defendants leave the same to be ascertained and proved when the said complainants produce the same in court. And as to the said codicils, and the contents thereof, while the defendants suppose that they are truly stated, they leave the proof thereof by the complainants when the same shall be produced.

They neither admit nor deny the statements contained in paragraphs five and six of the bill of complaint, respecting the payment of an unpaid subscription to, or the purchase of, additional shares of the stock of the Central Railroad Company of New Jersey, but leave the complainants to prove the same.

They admit the allegations and statements contained in paragraphs seven, eight, nine, ten, eleven, thirteen, fourteen, fifteen, and sixteen of the bill of complaint to be true, but for greater accuracy beg leave to refer to the several acts of the Legislature of New Jersey, referred to in the said paragraphs, when the same shall be produced upon the hearing of the said bill of complaint.

They admit the averment in the twelfth paragraph of the complainants' bill as to the line of railway therein mentioned, and the termini thereof, and while respondents admit that "the transportation of passengers, merchandise, coal, and other things, between said termini," entered into "the scheme and enterprise of the said company," they aver that the entire scheme and enterprise of the said company was to fulfill all the duties to which it was, or might lawfully be made, subject by the laws of the State of New Jersey, and to exercise and enjoy all the franchises, rights, and privileges which it could lawfully elect to exercise and enjoy, under the said laws then existing or thereafter to be enacted, and that, as to legislation subsequent to the date of the act under which the said company was incorporated, it was part of the scheme and enterprise of the company and of the corporators that the charter of the corporation should be subject to alteration, suspension, and repeal, in the discretion of the Legislature.

They admit the allegations and statements contained in paragraphs eighteen, nineteen, twenty, and twenty-one of the bill of complaint, with the following explanations and qualifications:

128 That while it is true that the said amount of the said capital stock was expended for the purposes in said paragraph mentioned, so large an amount was expended in addition thereto, and for purposes connected with the said enterprise other than those specifically mentioned, that in the month of February, 1877, the Central Railroad Company of New Jersey was debtor to an amount exceeding its capital stock of upwards of $31,000,000, of which $28,000,000 were secured by mortgage on its railroads and other properties, and to such an extent that no more money could be raised on any of its properties or securities, and at the same time was liable by reason of guarantees of over $14,000,000, and encumbered with a floating debt of upwards of $3,000,000, and its property was being seized by attachments, so that it was unable to run its railroads or make its properties available, and became utterly insolvent; and upon a bill filed for the purpose in the court of chancery of New Jersey, a decree of insolvency was entered and a receiver appointed.

That the prosperity of the Central Railroad Company of New Jersey alluded to in the bill of complaint was due while it lasted to its connections with and the transportation to tide-water of the business derived from under and by virtue of special contracts had with

the Lehigh Valley Railroad Company and the Delaware, Lackawanna and Western Railroad Company. That in consequence of difficulties between the two said companies and the Central, the latter lost the business of these roads, the Lehigh Valley constructing a new road from Phillipsburg to Amboy, and the Delaware, Lackawanna and Western leasing the Morris and Essex railroad, by means of which the Central lost fifty per cent. of its business.

That with this loss of business commenced the period of adversity which afterwards culminated in having a receiver appointed by this court. The Central never recovered from the embarrassment caused by the construction of these two new highways.

That during the last year of the receivership of said La-
129 throp an arrangement was made between the Baltimore and Ohio, the Reading, and the Central, by means of which a large and profitable transportation of passengers and freight was secured to the Central of Southern and Western business. That after running under such arrangement for several months it was suddenly put an end to by the Pennsylvania Railroad Company purchasing the Philadelphia, Wilmington and Baltimore railroad, and then cutting off the Reading and Central from any connection with the South and West.

That it is true that the moneys invested in the capital stock of the said company had been for some years prior to the year 1877 profitable in the way of dividends declared and paid on the same, but such dividends proved to be very far beyond anything that the profits of the company's business justified, and with other unprofitable expenditures so impoverished and embarrassed the company that it became utterly insolvent and unable to pay its debts, and Francis S. Lathrop was appointed by this court receiver, and afterwards Henry S. Little, as stated in the bill of complaint; that when the said Lathrop was appointed receiver the funded debt of the company was upwards of $28,000,000, and its floating debt and unsecured debt upwards of $3,000,000, and when the said Little was appointed receiver the funded debt of the company was $35,000,000, and its floating and unsecured debt was upwards of $3,000,000, and said receiver was embarrassed and put to a great inconvenience in running the various railroads connected with the trust, and was obliged during the year of his receivership to carry a floating debt of upwards of $2,000,000 in order to keep the roads running.

That it is not true that during the pendency of the receivership the said company speedily overcame its financial troubles.

It was almost five years after the appointment of the first receiver before even an attempt was made to restore the possession of its property to the company. In the month of June, 1882, an election for directors of the company was held by the stockholders in pursu-
ance of leave granted by the chancellor of the State of New
130 Jersey and under his direction, and this election was understood to be a preliminary step in the way of reinstating the company in the possession of its property, and was so represented to the chancellor; but nevertheless the company continued unable to make any arrangement for the settlement of its liabilities, and re-

mained an insolvent corporation, and, as such, subject to the risk of the entire sacrifice of its shareholders' interests in the process of a judicial settlement of its affairs, and a distribution of the proceeds of the property among its creditors.

That from the time that the said company was declared insolvent until the lease to the Philadelphia and Reading Railroad Company, in the said bill mentioned, had been arranged for, the financial condition of the Central Railroad Company of New Jersey rendered impracticable any attempt on its part to obtain possession of its property, and to resume on its own account the operation of its railroads, and the transaction of its business in the manner in which it had formerly been transacted.

Its property was of great value, but there was no mode in which it could be made available for the settlement of the debts of the company and the production of an income for shareholders, except through the intervention of some corporation whose interest it might be to lease the property on terms commensurate with its value to them.

The relative position of the railroads of the two companies rendered the railroads of the Central Company specially valuable to the Philadelphia and Reading Railroad Company, and it was through the realization of this value that the Central Railroad Company of New Jersey was enabled to provide for the payment of its debts, and secure its reinstatement as a solvent corporation.

It was well understood that the board of directors, chosen at the said election in June, 1882, were in favor of an alliance of some kind with the Philadelphia and Reading Company; and that this policy had the approval of the stockholders is shown by the fact that all the votes, including plaintiff's, at the said election,
131 and they amounted to 134,477, were cast in favor of the said board.

The making of any arrangement with the Reading Company was, however, unavoidably delayed; and, in the meantime, the Central Company could not make the provisions necessary to secure the dissolution of the chancellor's injunction against it as an insolvent corporation and the restoration of its property, although it became a necessity to close the trust under which the property of the company was held, and the chancellor so told the receiver.

Finally, it was agreed between the receiver and parties interested in the Reading and Central companies that the former company should provide security for the payment of the receiver's indebtedness by the latter company, and that as soon as the injunction was dissolved, and the Central Company replaced in the possession of its property, action should be taken upon the subject of leasing the property to the Reading Company, it being confidently anticipated that the arrangement would be accepted by the stockholders of the Central Company. This arrangement was carried out; the annual election was held by permission of the chancellor, at which the then directors of the Central Railroad Company were elected by a unanimous vote representing 154,333 shares of stock, including the com-

plainant's; the property was restored to the Central Company, and lease was soon afterwards effected.

Without meaning to question the correctness of the views expressed in the twenty-first paragraph of the bill of complaint as to the management of the Central Railroad Company in former years, the fact is that the company became bankrupt; that its property was put into the hands of a receiver; that its indedbtedness was largely increased during the receivership, and that the lease to the Reading Company was the means by which the property was restored to the stockholders and a remunerative dividend secured to them thereafter.

The averments in the twenty-second paragraph of the bill of complaint are admitted for all purposes of this case.

132 The averments in the twenty-third paragraph of the bill of complaint, so far as they relate to the financial embarrassment of the Central Company, the declaration of its insolvency, the proceedings in the court of chancery (and defendants beg leave to refer to the record of the said proceedings in the court of chancery), the resumption by the company of the possession of its property, its resumption of business, and the orders issued by Henry S. Little, as receiver and as president, are admitted. The other averments in the said paragraph which relate to the financial condition of the said company, and the mode in which it was rescued from bankruptcy, have already been answered.

The rate of dividend paid for some years preceding the statutory insolvency of the company proved to be altogether unwarranted; and even if the company had been able to resume its business without the aid and co-operation of the Reading Company, there was no reasonable prospect of its earning even a moderate dividend for some years, but, as has already been stated, there was no mode of terminating the receivership and reinstating the company in the possession of its property other than making the lease to the Reading Company.

That it is not true that the moneys invested in the capital stock of the said Central Railroad Company, as stated in the twenty-third paragraph of the said bill, had been very profitable and productive to the stockholders, as far as profits in the shape of dividends were realized, and that the books show that the said dividends have not been at the rate of —— per cent. a year; that the stockholders who made the first investment lost all their stock; that the Elizabeth and Somerville railroad was sold out under foreclosure, and did not bring enough to pay twenty-five per cent. of its mortgaged debt; that afterwards, in the year 1857, and after consolidation under the name of the Central Railroad Company of New Jersey, the company was on the eve of bankruptcy, and its directors seriously contemplated an assignment, and was saved by great sacrifices of those

133 interested in it; that in 1855 original second mortgages were offered at eighty-five per cent., and had a clause for conversion into stock within a given date, and were only taken by the stockholders at the personal solicitation of the president; that it passed through great changes of prosperity and adversity, until it

succumbed to its inevitable fate, in 1877, and was abandoned by its stockholders and directors as an insolvent corporation, and a large number of its stockholders who had purchased stock at upwards of a hundred sold out, many of them at ninety per cent. below par; that while speculators in the stock may have realized largely in their speculations, the *bona-fide* stockholders, who had become such for permanent investment, so far from finding their stock "profitable and productive," realized a loss upon the same of not less than fifty per cent.; so that while the statement may be true that "the average rate of dividend upon the capital stock of the said company for a number of years previous to and up to the year 1877 was ten per cent. per annum," for more than twice the same number of years the dividends were not one farthing.

The averments in the twenty-fourth paragraph of the bill of complaint, whether the same are predicated of the condition of the company at the time the said lease was executed, or of its condition at any time since its insolvency, are denied.

Defendants deny that any act or thing complained of by the complainants does take, destroy, endanger, or in anywise injure the property of the Central Railroad Company of New Jersey, or lessen its value or productiveness, as alleged in the twenty-fifth paragraph of the bill of complaint, but, on the contrary, allege that the acts and things of which complaint is made protect and preserve the trust property from depreciation and very greatly enhance its value and productiveness to the stockholders, who would consider any interference by the court with the lease sacrificing their interests to the comparatively insignificant interest of the complainants. That as to the other matters stated in the said twenty-fifth paragraph,
134 they are matters of law, and, assuming them to be true, all that the complainants can claim is the value of the stock they represent, and their damages, taking as a rule or rules for ascertaining the former the present market value, and for the damages any reasonable anticipations of the productiveness of the stock in the future, or by the adoption of any rule by which the complainants may obtain the full value of the property which they represent as executors and trustees; the defendants are willing, and hereby proffer to pay the complainant for all their stock and for all damages they have sustained or can or may sustain by the acts and doings of the defendants which the bill of complaint is filed to redress, if, upon the facts of the case, the said complainants have any standing in a court of equity to maintain their bill for relief.

The Philadelphia and Reading Railroad Company is a corporation existing under the laws of the State of Pennsylvania, and is very largely engaged in the business of transporting passengers and freight over its several railroads and canals. Its main line of railroad does extend into the anthracite coal region, and coal from that region forms a large portion of its freight. It is also, under the laws of New Jersey, the lessee of a railroad in that State, which connects with the Central Railroad of New Jersey, and forms a part of a line between the cities of Philadelphia and New York. It had not been

a rival of the Central Company in any other sense than that both companies were largely interested in the anthracite coal business.

In fact, the Reading Company furnished the Central Company with a large amount of business and co-operated with it in maintaining the line between Philadelphia and New York already mentioned. There were no two companies whose interests were more closely identified; and it was this circumstance that gave the Central Company's property the value which enabled it to effect the lease hereinbefore mentioned. The averment in the bill of complaint that the Reading Company "antagonized" the Central at every point is altogether incorrect, and, if it had been true, would have been an additional argument in favor of the lease. On the contrary, it had
135 always been anxious to maintain the most friendly relations with the Central Company, and the fact that the board of directors of the latter company, who were elected at the last two elections, received an actually unanimous vote, was owing to their well-known disposition in favor of the closest alliance with the Reading Company. Indeed, the leasing of the Central Railroad to the Reading Company was authorized at the said meeting by a unanimous vote.

And, further answering, these respondents deny that the said The Philadelphia and Reading Railroad Company has been grossly mismanaged, or that it labors under a debt of nearly $170,000,000, and while admitting that the said Philadelphia and Reading Railroad Company was recently in the hands of receivers appointed by the court, these defendants deny that the said The Philadelphia and Reading Railroad Company is insolvent, or that any judgments, liens, or debts exist against it which cannot be paid as they mature. And the defendants charge and say that the said The Philadelphia and Reading Railroad Company is solvent; that it is now and has been for nearly three years last past earning more than sufficient to meet all of its obligations, and that the value of its property largely exceeds the amount of its obligations.

It is true that with the permission of the chancellor a meeting of the stockholders of the Central Railroad Company was held on the eleventh day of May, 1883, the regular charter day, and respondents admit, as averred in the twenty-seventh paragraph of the bill of complaint, that complainants attended thereat, and declined or omitted to vote for the resolution there offered with regard to the lease and contract between the Central and Reading companies; but respondents, while admitting that no draft or abstract of the said lease was submitted to the complainant at the said meeting, aver that the practical and substantial terms thereof were fully stated in the report of the president of the said company, which was read to and approved by the said meeting, and which report, so far as it related to the said lease and contract, was as follows:

136 "A proposition has been made by the Philadelphia and Reading Railroad Company to lease and acquire the property of the company under a lease and contract for nine hundred and ninety-nine years, which will guarantee six per cent. dividends to the stockholders, commencing to run from September 1st next, the

first quarterly dividend being payable on December 1st next, and the board of directors are of opinion, subject to the proper ratification by the stockholders, that after the termination of the receivership and consequent legal power of the company to act in the premises, such lease and contract should be made."

After the reading of the said report it was resolved, by a vote of one hundred and thirty-eight thousand nine hundred and fifty-one shares, and without a solitary dissent, as follows:

"Resolved, That the stockholders hereby approve of the proposed lease and contract to and with the Philadelphia and Reading Railroad Company, and request the directors to execute and carry the same into effect immediately upon the company acquiring the legal power to act in the premises by the termination of the receivership."

The election for directors was then had, and, by a unanimous vote of 154,333 shares, the following board was elected:

Henry S. Little, John Kean, Franklin B. Gowen, Edward C. Knight, Robert Garrett, Sidney Shepard, Theodore F. Randolph, Samuel Sloan, and J. Kennedy Tod. The complainants, through Alfred Mills, voted their shares in favor of the said board, and respondents aver that the said votes were so cast with a full knowledge that the said lease and contract would be executed in accordance with the terms of the said resolution, and defendants deny that the complainants did not suppose or suspect that it was the intention of the directors of the Central Company to execute the said lease without first formally or otherwise submitting the same to the stockholders, or without receiving the assent of each and every stockholder,
137 and they further deny that the subsequent action of the board was any surprise to the complainants.

The defendants, further answering, say that at the first election of directors under the order of the chancellor, to wit, on the twenty-third day of June, 1882, Alfred Mills, one of the complainants, was present in person, and cast 2,048 votes as executor of the estate of said Stephen Vail; that at the time he cast said votes he knew that the persons he voted for as directors were in favor of and intended to make some arrangement by lease or otherwise between the two companies, the Reading and the Central; that his co-executor and co-complainant approved of the casting of the vote in the manner aforesaid, and with the reason why it was so cast; and the action of said Mills met his entire approbation.

That during the interval between said election and the next election in May, 1883, it was a matter of discussion among the stockholders and of public notoriety and of discussion in the daily papers in New York city and Philadelphia that a lease was to be made of the "Central" to the "Reading," and the terms of said lease; that it was well known to the complainants and approved of by them; that said Mills frequently called at the office of the "Central," in New York, and conversed with the president of the "Central" about the proposed lease; that he stated that he thought well of it, but the executors could not vote for it, because they thought the will of their testator did not authorize them to do so; but they would willingly conform to the

direction of any proper court, and that his co-executor agreed with him.

The defendants further say that it was well understood by the complainants that the directors to be elected on the 11th of May, 1883, were to be elected with a view of carrying out the wishes of the stockholders as to the lease, and that the stockholders, at the meeting held for directors, would vote in reference to the same; that the said Alfred Mills was present and, as one of the executors of Stephen Vail, voted for the persons elected, knowing that they were favorable to a lease to the Reading Company, and had
138 been, by the aforesaid resolution of the stockholders, instructed to execute a lease on the terms in the said resolution mentioned.

The defendants further say that while the said defendants well knew of all the acts of the parties interested in the Reading and Central in reference to making closer connection between the two companies, and of some arrangement by which their interest should become permanently identified, and for that purpose were looking most favorably towards a lease, yet that up to the execution of the said lease the complainants never made an objection of any kind, but, on the contrary, gave the officers of the defendants, particularly of the Central, to understand that individually they approved of the then contemplated lease, and that the only reason why they could not consent was because of their attitude as directors and the peculiarity of the trust devolving upon them by the will.

That the president of the Central saw Mills, one of the complainants, on the day of the meeting of stockholders to ratify the lease, and in a conversation with him in substance stated what is herein alleged as to their position as executors. That at that time, or at any other time, it was never intimated that the said complainants would institute a suit or contemplated any proceedings at law or equity in the premises.

That the defendants executed the lease under the impression that individually complainants approved the same and as executors would submit to in any manner, so that they were protected from any legal responsibility as executors.

That defendants admit that the lease in the said bill of complaint mentioned was executed and delivered to the Reading Company on the twenty-ninth day of May, 1883, but deny that this was done immediately after the discharge of the receiver, averred in the twenty-ninth paragraph of the bill of complaint, or with any undue or unusual haste.

The terms and conditions of the said lease were fully and carefully considered by the counsel of the Central Company, and the
139 said lease, as executed, was approved in every respect by the said counsel. And further answering, defendants deny that the said lease was executed without the consent of the stockholders of the Central Company, and aver that it was approved and ordered to be executed by the board of directors of the said company, in pursuance of the resolution hereinbefore recited; that defendants cannot answer as to the complainants' knowledge of or consent to the

actual execution of the said lease; but they aver that the complainants knew that the lease was to be executed; that they had neither voted against the resolution authorizing the lease nor in any manner or form expressed their disapproval of the same, nor had these defendants, or any of them, any notice, intimation, or reason to believe that they had not acquiesced, and would not thereafter acquiesce, in the execution of the same; that the terms and conditions of the said lease will appear by reference to the same, to be produced by these defendants on the hearing, and they aver that the alleged abstract or summary of the said lease contained in the twenty-ninth paragraph of complainants' bill is incorrect and altogether misleading.

That the said Philadelphia and Reading Railroad Company, on the day last aforesaid, entered into the possession of the said leased premises, and have had full possession ever since, and upon taking such possession the said Philadelphia and Reading Railroad Company did, by its president, issue the order or circular notice announcing that it had taken possession of the said railroads, leased lines, ferries, real estate, property, plant, traffic, and business of the said The Central Railroad Company of New Jersey, and also issued the order in paragraph 35 of the bill particularly mentioned.

That it is true no other consideration was given, or is to be given, for the said premises, except that stipulated and secured by the lease.

That when the said leased property was turned over to the lessee, there were in the employment of the said railroad company, connected with the running, management, and superintendence of the said leased property, upwards of seven thousand employees, all of whom have since been discharged as employees of the Central Railroad of New Jersey, and that there are now connected with the said Central Railroad Company only the officers, constituting the board of directors, and the president, secretary, and treasurer.

That any interruption of the management of the leased property, such as is contemplated by and would necessarily follow the issuing of any injunction prayed for by the bill, or interfering with the lease in any way by a decree of this court, is impossible, or, if possible, would be ruinous to the complainants as stockholders and to the other stockholders holding the remainder of the whole amount of $18,563,200 outstanding stock, and would be very injurious to the creditors and greatly depreciate the value of the securities of the Central as aforesaid; and they again deny that the said lease is in any manner or to any extent injurious to the interests of the complainants or any stockholder of the said Central Company, or that it does change or is in any respect inconsistent with the scheme, enterprise, or primary character of the said railroad company; and further answering, they say that the lease was and is most advantageous to the interests of the company and all its stockholders, and that by means of it the company was enabled to regain the possession of its property and provide for dividends to its stockholders, which otherwise it would not have been able to do.

That it is true that the said lease and contract had not been sub-

mitted to the stockholders of the Central Company for their approval at the time that the resolution requesting the directors to execute the same was passed; that the said lease and contract had not then been prepared, no formal action in the premises having then been taken by the shareholders; that, as was stated in the president's report, the material points in the agreement to be made with the Reading Company were that that company was to lease and acquire the property of the Central Company under a lease and con-
141 tract for the term of nine hundred and ninety-nine years, and to pay therefor an annual sum sufficient to yield a quarterly dividend of one and half per cent. to the shareholders of the Central Company, from and after the first day September, A. D. 1883; that it would have been altogether unprecedented and unreasonable to have discussed at a shareholders' meeting the various formal and legal provisions, essential or incident to a railroad lease for nine hundred and ninety nine years; that these were matters of detail to be settled by the board of directors acting under the advice of counsel; that the shareholders meant by their resolution that the board of directors should be charged with this duty, and that no one ever suggested that action on the resolution should be postponed until a draft of the lease should be prepared and submitted to the shareholders; that defendants are advised that said lease was executed with full authority of law, and that it was not and is not in any respect whatever either illegal, inequitable, and void. And further answering, as to the averments in the thirty-first paragraph of the bill of complaint with regard to the complainants never having approved of or assented to the said lease, these defendants refer to what they have heretofore answered in the premises.

That it is true that no formal notice of the execution and delivery of the lease, and no copy or abstract of the same, were sent by or on behalf of the Central Company to the complainants or any other stockholder of the company, but every information of the lease, and copies of it as soon as it was printed, could at any time have been had by the complainants or any stockholders of the Central Company.

The defendants admit that the said Mills, on or about the 22d of June, 1883, called at the office of the "Central," and was furnished with a copy of the lease to read, which he did read, and made no objection to the same; that no one on behalf of the defendants was ever informed of the complainants' application to counsel, or
142 of such counsel's opinion; that said Mills gave the president of the "Central" to understand that, individually, they were in favor of the lease, but, as executors, could give no consent.

That it is true, as averred in the thirty-fourth paragraph of said bill, that a meeting of the stockholders of the Central Company was held on the sixth day of July, 1883, for the purpose of taking action on the said lease, and that the complainant, Alfred Mills, acting on behalf of both complainants, did then and there publicly vote against the ratification of the same, and defendants are content to admit that his vote was cast in the manner stated in the said paragraph; and further answering, defendants say that at the said

meeting 151,828 shares of stock were voted in favor of ratifying the said lease, and that 4,124 shares, including the complainants', were voted against such ratification, and that of the said 4,124 shares at least 1,500 (not including any of the complainants') have been since transferred, and so far as known are now held by persons who are in favor of the lease.

Notwithstanding, however, the vote thus cast by the complainants, the defendants did not and had no reason to suppose that the complainants had any other purpose in view than that of conforming to what they supposed to be the directions of their testator as to not selling their shares of stock, and until the bill of complaint was filed the defendants were permitted, without protest or notice of any kind from the complainants, to carry out the provisions of the lease, and to involve thereby vast interests, not only of their own, but of others who have not been made parties to this bill, to the incalculable injury of the companies defendants, their stockholders and creditors, should the complainants obtain the injunction orders which they so inequitably pray for.

The defendants further show that in the year 1871 the New Jersey Central became the lessee of the Lehigh and Susquehanna railroad and its branches and appurtenances, constructed and owned by a corporation created under the laws of the State of Pennsylvania, which said railroad and branches consist of more than
143 one hundred and ninety-three miles of railroad, connecting at Phillipsburg with the New Jersey Central, and running thence into the coal fields of Pennsylvania, and by means of which the New Jersey Central was enabled to do the "enormous and productive" coal business which the bill of complaint refers to and alleges to be the main source of profit to the New Jersey Central, and without which the bill of complaint shows the complainants' stock is not worth a dollar, and yet, although not stated in the bill, the Lehigh and Susquehanna railroad has passed into the possession of the said Philadelphia and Reading Railroad Company by the co-operation of both the New Jersey Central and the Lehigh Coal and Navigation Company, and under a new contract between the Philadelphia and Reading Railroad Company and the Lehigh Coal and Navigation Company; and the complainant, seeking no relief as to this disposition of the Lehigh and Susquehanna railroad, asks as a stockholder for relief which would destroy his own stock and that of all the other stockholders.

These defendants insist that, under the circumstances, complainants are not entitled to any relief in the premises; that if they are entitled to any, it is not to have the lease declared void and the released property restored; that since the execution of the lease other equities and rights of innocent parties have intervened, and that any interference with the said lease will greatly damage others, which injury might have been prevented if the complainants, assuming that they ever had any equity, had acted before the lease was executed, and for which delay they give no excuse in their bill.

The defendants insist that the directors of the Central had the right, with the consent of a majority of the stockholders, to make

and execute the lease in question, and that if the alleged principle of law invoked by the complainant as to the rights of every stockholder to have the scheme or enterprise in which he embarked held inviolate is as stated, yet it has no application to the subject-matter of this suit; and, further, if it has any application at all, can only apply to the roads from the Hudson to the Delaware river,
144 to the Flemington Branch, the Newark and New York railroad, and the Elizabethport and Perth Amboy railroad.

The defendants aver that the said lease from the Central Railroad Company of New Jersey to the Philadelphia and Railroad Company is not invalid under the laws of the State of New Jersey, and they aver that the same is expressly authorized under and by the laws of the said State.

These defendants do most respectfully deny the right of this honorable court to interfere in the premises, and pray that the said bill may be dismissed, with costs.

H. S. LITTLE, *President.* [SEAL.]

Attest:
SAMUEL KNOX, *Secretary.*

F. B. GOWEN, *President.* [SEAL.]

Attest:
A. FOSTER, *Secretary.*

UNITED STATES OF AMERICA, }
City, County, and State of New York, } *ss:*

The answer of the defendants, The Central Railroad Company of New Jersey, was taken this twelfth day of December, in the year eighteen hundred and eighty-three, before me, under the common seal of the said corporation, as by their seal thereunto affixed appears.

JOHN L. CONOVER,
Master in Chancery of New Jersey.

145 UNITED STATES OF AMERICA, }
State of Pennsylvania, } *ss:*

The answer of the defendants, The Philadelphia and Reading Railroad Company, was taken this eleventh day of December, in the year eighteen hundred and eighty-three, before me, under the common seal of said corporation, as by their seal thereunto affixed appears.

[SEAL.]

J. H. BURROUGHS,
Commissioner for New Jersey.

B. WILLIAMSON,
Solicitor and Counsel of Defendants.

146 *Petition for Removal to the Circuit Court of the United States in and for the District of New Jersey.*

In Chancery of New Jersey. Chancery Clerk's Office, Docket 9, page 735.

Between ALFRED MILLS and JOHN H. LIDGERWOOD, Surviving Executors of the last Will and Testament of Stephen Vail, deceased, Complainants,

and

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, THE PHILADELPHIA and READING Railroad Company, and others, Defendants.

To the Honorable Theodore Runyon, chancellor of the State of New Jersey:

The petition of the Central Railroad Company of New Jersey, The Philadelphia and Reading Railroad Company, Franklin B. Gowen, Joshua B. Lippincott, Henry Lewis, Isaiah V. Williamson, Edward C. Knight, Joseph B. Altemus, Henry S. Little, John Kean, and Robert Garrett, respectfully shows:

That your petitioners, with whom was joined as a defendant Theodore F. Randolph, who, since the institution of said
147 above-named suit, has died, constitute and embrace all the defendants in said suit. That the amount in dispute therein exceeds, exclusive of costs, the sum of value of $500.

That the complainants in said suit, Alfred Mills and John H. Liderwood, were, at the time of bringing said suit, and still are, citizens of the State of New Jersey. The defendants are the petitioners above named, and of these the Central Railroad Company of New Jersey was, at the time of bringing said suit, and still is, a corporation created by and existing under the laws of the State of New Jersey. The Philadelphia and Reading Railroad Company was, at the time of bringing said suit, and still is, a corporation created by and existing under the laws of the State of Pennsylvania; and of the other defendants, Franklin B. Gowen, Joshua B. Lippincott, Henry Lewis, Isaiah V. Williamson, Edward C. Knight, and Joseph B. Altemus, were, at the time of bringing said suit, and still are, citizens of the State of Pennsylvania; Henry S. Little and John Kean were, at the time of bringing said suit, and still are, citizens of the State of New Jersey; Robert Garrett was, at the time of bringing said suit, and still is, a citizen of the State of Maryland, and Theodore F. Randolph was a citizen of the State of New Jersey.

That the said suit is one instituted by the plaintiffs, who are the executors of one Stephen Vail, and, as such, holders of certain shares of stock of the Central Railroad Company of New Jersey, one of the defendants above named, to obtain a decree requiring the surrender and cancellation as illegal, void, and a fraud upon the rights of complainants of a certain lease of all its railroads and other property executed by the said Central Railroad Company of New Jersey to the said Philadelphia and Reading Railroad Company, and the payment over by the said Reading Company to the said

Central Company of all rents, tolls, and profits by the former, as lessee as aforesaid, and further requiring that the said Reading Company should cease and refrain from doing any act under the terms of said lease.

That the defendants other than the two above-mentioned railroad companies were made parties to the said suit only by
148 reason of their official connection with the said two companies, and are not necessary or substantial parties to the controversy, which relates solely, as already mentioned, to the validity of the lease above referred to, of the railroads and other property of the Central Company to the Reading Company. The said Franklin B. Gowen was, at the time of bringing suit, but has since ceased to be, president of the Philadelphia and Reading Railroad Company; he was also and still is a director of the Central Railroad Company. The said Joshua B. Lippincott, Henry Lewis, and Isaiah V. Williamson were, and still are, directors of the Reading Company; the said Edward C. Knight was, and still is, a director in both the Central and Reading companies; the said Henry S. Little was and is the president and a director of the Central Company; the said John Kean and Robert Garrett were, and still are, directors of the Central Company, and Theodore F. Randolph was a director of the Central Company.

That the complainants in the suit claim that as stockholders in the Central Railroad Company of New Jersey they have the right to institute said suit upon behalf of the said company, to compel the surrender of the Philadelphia and Reading Railroad Company of the above-mentioned lease, and an accounting for and return by the latter company to the former of all moneys received as such lessee as aforesaid, and the controversy in said suit is therefore between citizens of different States, as the complainants and the Central Railroad Company are citizens of the State of New Jersey, and the Philadelphia and Reading Railroad Company is a citizen of the State of Pennsylvania; that the controversy in said suit is, moreover, one arising under the Constitution and laws of the United States, in that the right to make said lease is rested by the defendants upon a certain statute of New Jersey, approved March 11th, 1880, which provides, *inter alia*, as follows:

"It shall be lawful for any corporation incorporated under this act, or under any of the laws of the State, at any time during the continuance of its charter, to lease its road, or any part thereof,
149 to any other corporation or corporations of this or any other State, or to unite and consolidate as well as merge its stock, property, and franchises, and road with those of any other State, or to do both; and such other company or companies are hereby authorized to take such, and to unite, consolidate, as well as merge its stock, property, franchises and road with said companies, or to do both; and after such lease or consolidation the company or companies so acquiring said stock, property, franchises, and road may use and operate such road, or all or any of them, and transport freights and passengers over the same, and take compensation therefor, according to the provisions and restrictions contained in this

act, notwithstanding any special privilege heretofore granted or hereafter to be granted to another corporation for the transportation of freights and passengers between any points on the lines of said road, or any other points within or without this State," which said statute, it is contended by the complainants, is null and void, in that it attempts to alter and amend charters of incorporated companies without the consent of all the stockholders of said companies, and is therefore violative of the provision of the Constitution of the United States that no State shall pass any law impairing the obligation of contracts.

And your petitioners further respectfully show that the bill in this suit was filed upon the twenty-eighth day of August, A. D. 1883; that the cause has not yet been heard, nor has any term of this court intervened at which the same could have been heard, and that your petitioners are desirous of removing the same before the hearing thereof into the next circuit court of the United States in and for the district of New Jersey, under the authority of and in accordance with the provisions of the act of Congress, approved March 3d, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of cases from State courts, and for other purposes." And your petitioners offer herewith a bond with good and sufficient surety for their entering in said circuit court on the first day of its next session a copy of the record
150 in this suit, and for paying all costs that may be awarded by said circuit court if said court shall decide that this suit was wrongfully removed thereto.

To the end that this suit may be removed to the said circuit court as aforesaid, and may be therein proceeded in as if it had been originally commenced there, your petitioners pray your honorable court to proceed no further in said suit.

And they will ever pray, &c.

H. S. LITTLE, *Pres't*

Attest: SAM. KNOX, *Sec'y.* [L. S.]

GEORGE DEB. KEIM, *President.*

Attest: A. FOSTER, *Sec'y.* [L. S.]

F. B. GOWEN.
J. B. ALTEMUS.
HENRY LEWIS.
I. V. WILLIAMSON.
E. C. KNIGHT.
J. B. LIPPINCOTT.
JOHN KEAN.
H. S. LITTLE.

B. WILLIAMSON,
Sol. & Counsel of Petitioners.

COUNTY OF PHILADELPHIA, *ss:*

Franklin B. Gowen, one of the above-named petitioners, having been duly sworn according to law, says: That the facts set forth in the above petition are true to the best of his knowledge, information, and belief. F. B. GOWEN.

Sworn to and subscribed before me, this 31st day of January, 1884.

[L. S.] JOHN G. LAMB,
Notary Public.

Petition filed Feb'y 2, 1884.

151 Know all men by these presents, that we, The Central Railroad Company of New Jersey, The Philadelphia and Reading Railroad Company, Franklin B. Gowen, Joshua B. Lippincott, Henry Lewis, Isaiah V. Williamson, Edward C. Knight, Joseph B. Altemus, Henry S. Little, John Kean, as principals, and S. C. Harris and Thomas M. Richards, as sureties, are held and firmly bound unto Alfred Mills and John H. Lidgerwood, surviving executors of the last will and testament of Stephen Vail, deceased, in the sum of two thousand five hundred dollars ($2,500), lawful money of the United States of America, to be paid to the said obligees; to which payment, well and truly to be made, we do bind ourselves, and each of us, and our respective successors, heirs, executors, and administrators, and each and every of them, jointly and severally, firmly by these presents. Sealed with the common corporate seals, duly attested, of the said companies, and the hands and seals of the said
152 parties this —day of ——, anno Domini eighteen hundred and eighty-four.

Whereas a suit in equity has been brought in the chancery court of New Jersey, in which the obligees are the complainants and the principals herein the defendants;

And whereas the defendants are desirous of removing said suit to the circuit court of the United States for the district of New Jersey, and have filed their petition therefor under and in accordance with the provisions of the act of Congress in such case made and provided:

Now, the condition of this obligation is such, that if the said defendants shall enter or cause to be entered in the circuit court of the United States for the district of New Jersey, on the first day of its next session, a copy of the record of the aforesaid suit, and shall pay all costs that may be awarded by the said circuit court, if that court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise, it shall remain in full force and virtue.

153 GEORGE DEB. KEIM, *President.* [L. S.]

Attest: A. FOSTER, *Sec'y.*

F. B. GOWEN. [L. S.]
J. B. ALTEMUS. [L. S.]
HENRY LEWIS. [L. S.]
J. V. WILLIAMSON. [L. S.]
E. C. KNIGHT. [L. S.]
J. B. LIPPINCOTT. [L. S.]
H. S. LITTLE, *Pres't.* [L. S.]

Attest: SAM. KNOX, *Sec'y.*

JOHN KEAN. [L. S.]
H. S. LITTLE. [L. S.]
S. C. HARRIS. [SEAL.]
THOS. M. RICHARDS. [SEAL.]

(Endorsed:) In chancery of N. J. Between Stephen Vail's ex'rs, compl'ts', and Central R. R. Co. of N. J., *et al.*, def'ts. Bond. B. Williamson, sol. Filed Feb'y 2, 1884.

154 United States Circuit Court District of New Jersey.

ALFRED MILLS and JOHN H. LIDGERWOOD, Ex'rs, &c.,
vs.
THE CENTRAL RAILROAD CO. OF N. J., PHILAD'A AND READING RAILROAD COMPANY *et al.*

On motion to remand.

By NIXON, district judge:

The bill of complaint in this case was originally filed on August 28, 1883, in the court of chancery of New Jersey. The defendants put in a joint and several answer on December 14, 1883, and on the second of February following they presented a petition to the State tribunal for the removal of the suit to this court. The petitioners based their right of removal on two grounds:

(1.) Because the defendants justified the execution of the lease, which the complainants were seeking to set aside, under the provisions of an act of the Legislature of New Jersey, approved March 10, 1880, wherein an attempt was made to alter and amend the charter of incorporated companies, without the consent of all the stock-
155 holders, which the complainants allege to be in violation of the Constitution of the United States; and

(2.) Because the only necessary and substantial parties to the controversy were the Central Railroad Company of New Jersey and the Philadelphia & Reading Railroad Company, which were corporations respectively of New Jersey and Pennsylvania.

1. Is there a Federal question necessarily involved? A careful examination of the pleadings and the issues there presented fail to disclose one. It is true that the defendants in their petition set forth that their right to make the lease which the complainants are endeavoring to avoid is rested by them upon a certain statute of the State of New Jersey, passed March 10, 1880, authorizing corporations organized under any of the laws of the State to lease their road, or any part thereof, to any corporation of New Jersey, or any other State, and allege that the complainants contend that said statute is null and void because it violates the provision of the Constitution of the United States that no State shall pass any law impairing the obligation of contracts. But no such ground of relief is found in the bill of complaint, nor is it suggested in the pleadings.

It nowhere appears that the complainants invoke the pro-
156 tection of the Constitution of the United States or question the constitutionality of any law of New Jersey. They do, indeed, charge that the lease is void and has been executed contrary to law, but they make no specific statement in what respect or upon what ground it is illegal. It is hardly competent for the defendants to incorporate into their petition for removal a possible Federal

question that may arise during the progress of the case, especially when the question is not only not suggested by the complainants, but is expressly disavowed and repudiated by them, and then to claim that the removal of the controversy into a Federal court is proper in order to have it adjudicated.

If it should appear during the continuance of the cause that a Federal question is necessarily involved, I do not say that no appeal would lie from the highest State tribunal to the Supreme Court, but I do say that the defendants should not be allowed to transfer the case from the chosen jurisdiction of the complainants upon the bare suggestion of a contingency which may never happen.

2. With regard to the second ground a more difficult question is presented. The difference of views of the respective part-
157 ies arises from the different conceptions of the learned counsel respecting the said parties to the controversy, and the purposes and objects of the bill of complaint.

The defendants allege that the right of the complainants to bring such an action is based upon the assumption of this right, as stockholders, to represent the Central Railroad Company of New Jersey; that the relief asked for in the bill of complaint is not merely relief for the complainants as such, but for all the stockholders, and for the said corporation of which they are the representatives; that whether the claims of said company are asserted by its governing body, or by one of its stockholders, it is the company itself which is the party to the suit; that the individual defendants are not necessary and substantial parties to the litigation; and that, even if they are, the case discloses a controversy wholly between two corporations of two different States, which can be fully determined as between them without the presence of the other parties.

The complainants, on the other hand, insist that the Central Railroad Company is the naked trustee of the complainants;
158 that the latter have a beneficiary estate and interest in the lands, franchises, tolls, and all other property in its possession and under its control as trustees; that the execution of the lease and contract was a breach of trust and a diversion of the trust property to strangers without authority of law; that so far from there being identity of interest between the complainants and the New Jersey Central Railroad Company the controversy between them is actual, and in every sense antagonistic; that the individual defendants are made parties, not formally, but for the purpose of obtaining specific relief against them as active agents in making an unlawful transfer of their property; and that no separate controversy can be found between any two parties, citizens of different States, which can be fully determined between them without the presence of the other parties to the action.

It is conceded that support is found for the defendants' view in the case of Arapahoe Co. *v.* Kansas Pac. R. Co., 4 Dill., 277.

In that case the plaintiffs, citizens of Colorado, and stockholders of the Denver Pacific Railroad Company, a corporation of Colorado, filed a stockholders' bill in a State court of Colorado against the said

Denver Pacific Railroad Company and its directors, and the
159 Kansas Pacific Railroad Company, a corporation of Kansas, and certain individual citizens of other States than Colorado. The object of the suit was to obtain an accounting with the Kansas Company and other defendants on an allegation that a majority of the trustees of the Denver Company had been committing frauds, and thus depriving that company of the funds belonging to it. The relief prayed for was a decree in favor of the Denver Company for the sum found due on the accounting.

Mr. Justice Miller said that the interest of the plaintiffs and of the Denver Pacific Company were identical; that if the suit was successful no decree could be entered in favor of the defendants, but only in favor of the Denver Company, for the amount found due; and that such was the flexibility of the mode of proceeding in a court of chancery, that, where a party refused to be the complainant in a suit, other interested parties might file a bill and make him a defendant, without changing his relations to the controversy; and that, under such circumstances, the court had power, for the attainment of justice, to render a decree in favor of one defendant against the other.

Observing that no relief was asked against the individual
160 defendants, he treated them as not necessary parties to the suit, and retained the case as one of Federal cognizance, because the real controversy was, in fact, between the two corporations of different States. But it seems to me that the cases are distinguishable. In the latter, neither the Denver Pacific Railroad Company nor its board of directors, as such, was complained of.

No relief was prayed for against the corporation, but in favor of the corporation against the fraudulent acts of a part of its trustees. All the material defendants against whom relief was asked were citizens of other States. There was nothing to be adjudicated against parties living in the same State. But in this case the suit is against the Central Railroad Company and a number of individuals, some of whom are citizens of the same State with the complainants, and others are citizens of different States, and specific relief is prayed against the acts of the corporation and of the individuals who are made defendants.

Even if the theory should be adopted that the New Jersey Central Railroad Company is the real complainant, some of the defendants against whom relief is sought are citizens of the same
161 State, and they are indispensable parties, if the complainants are to have determined the questions raised in the pleadings, and to have extended to them the full measure of relief which they pray for.

The case of Bacon *v.* Rives, 106 U. S., 99, does not help the defendants in their contention. The court there held that the executors of George Rives were not necessary and substantial parties to the issue between the complainants and the principal defendant, because no relief was prayed for against them, and they were made parties for the sole purpose of reaching the interest of George C. Rives in his father's estate, in their hands, if the complainants

should succeed in their suit against him. Though made formally defendants, they were regarded substantially as mere garnishees. But in the present case specific relief is sought against the individual defendants, who are charged to be personally responsible for their alleged illegal acts in the misapplication of property which they held as trustees of the complainants. It falls rather within the principle of Corbin *v.* Van Brunt, 105 U. S., 576, where the suit was for the recovery of land and damages for its detention.

162 The controversy in regard to the recovery of the land was between citizens of the same State, and the one for damages for detention between citizens of different States.

The court held that separate and distinct trials of these issues were not admissible, and that the case should be remanded to the State court from which it had been improperly removed.

Regarding the action as one where the main controversy is between citizens of the same State, and not finding in it any "controversy wholly between citizens of different States, and which can be fully determined as between them," I must hold that the suit is not removable, on the ground of citizenship, under the second section of the act of March 3, 1875, and the motion to remove must prevail.

(Endorsed:) U. S. circuit court, district of New Jersey. Vail's Executors *vs.* The Central R. R. Co. *et als.* On motion to remand, &c. Opinion. Filed May 2, 1884. S. D. Oliphant, clerk.

163 United States Circuit Court, District of New Jersey. In Equity.

Between ALFRED MILLS & JOHN H. LIDGERWOOD, Surviving Executors of Stephen Vail, Deceased, Complainants,

and

THE PHILADELPHIA & READING RAILROAD COMPANY and THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, and others, Defendants.

This cause having been commenced in the court of chancery of New Jersey, and the defendants having moved the same to this court, and the complainants having moved to remand the same, and motion having been argued by Mr. Henry C. Pitney and Mr. Barker Gummere for the complainants and Mr. James E. Gowan for the defendant, and the court having taken time to consider thereon, and being now of the opinion that the said cause was not removable under the acts of Congress in such case made and provided—

164 It is now, on this seventh day of May, A. D. 1884, ordered that the said cause be, and the same is hereby, remanded to the court of chancery of New Jersey, to be there proceeded in according to law.

JNO. T. NIXON, J.

(Endorsed:) Between Alfred Mills & John H. Lidgerwood, surviving ex'rs of Stephen Vail, deceased, complainants, and The Philadelphia & Reading R. R. Co. and The Central R. R. Co. of N. J., and others, def'ts. H. C. Pitney, sol'r. Filed May 7, 1884. S. D. Oliphant, clerk.

165 UNITED STATES OF AMERICA, } ss:
District of New Jersey, }

I, S. D. Oliphant, clerk of the circuit court of the United States for the district of New Jersey, in the third circuit, do hereby certify the foregoing to be a true transcript of the record of said entitled suit as the same remains on file in my office at Trenton in said district.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Trenton, this seventh day of June, A. D. eighteen hundred and eighty-four.

[SEAL.] S. D. OLIPHANT, *Clerk.*

Endorsed on cover: New Jersey C. C. U. S. No. 878. The Central Railroad Company of New Jersey, The Philadelphia & Reading Railroad Company, *et al.*, appellants, *vs.* Alfred Mills and John H. Lidgerwood, surviving executors of Stephen Vail, deceased. Filed 14th July, 1884.

113-249

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JAMES H. McKENNEY,
CLERK.

No. 878. *October Term, 1884.*

In the Supreme Court of the United States.

The Central Railroad Company of New Jersey et al., Appellants,

vs.

Alfred Mills and John H. Lidgerwood, Surviving Executors of Stephen Vail, deceased, Appellees.

PAPER-BOOK OF APPELLANTS.

JAMES E. GOWEN,
Of Counsel.

Allen, Lane & Scott, Printers, 229-231 South Fifth Street, Philadelphia.

In the Supreme Court of the United States.

The Central Railroad Company of New Jersey, The Philadelphia and Reading Railroad Company, et al., *Appellants*,

vs.

Alfred Mills and John H. Lidgerwood, surviving Executors of Stephen Vail, deceased, Appellees.

October Term, 1884.

No. 878.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

PAPER-BOOK OF APPELLANTS.

I. STATEMENT OF THE CASE.

The present appeal is one taken from the decree of the Circuit Court of the United States for the District of New Jersey, remanding the suit to the Court of Chancery of New Jersey, where it had originally been brought, but from which, upon petition of all the defendants, it had been removed to

the former court. It was so remanded because, in the judgment of the learned district judge, the suit was not one arising under the Constitution or laws of the United States, nor was there involved in it any controversy between citizens of different States. Both of these jurisdictional facts, it was alleged by the defendants, existed, and they had, in their petition, rested their right to remove upon both grounds.

The case disclosed by the bill and answer, so far as it is necessary for the proper understanding and consideration of the present appeal, is as follows:—

Complainants, executors of Stephen Vail, deceased, and, as such executors, holders of certain shares of stock of the Central Railroad Company of New Jersey, instituted the suit for the purpose of obtaining a decree setting aside as illegal and void a certain lease of all its railroads and property made by the said Central Railroad Company to the Philadelphia and Reading Railroad Company. They further asked that the Philadelphia and Reading Railroad Company should be ordered to account with and pay over to the Central Railroad Company all sums that it had received by virtue of said lease, and that upon the failure of the said Philadelphia and Reading Railroad Company to make such payment, certain individuals, directors of the two companies, should be decreed to pay the same, for the reason that they, under cover of said lease, had been actively engaged in diverting to the Philadelphia and Reading Railroad Company the moneys and other property which should have accrued to the Central Railroad Company. There was also a prayer that the "said defendants should be required to pay the plaintiffs' damages and costs."

In their bill, after reciting their ownership as executors of certain shares of the stock of the Central Railroad Company of New Jersey, and the powers conferred upon them as to said stock by the will of the decedent, complainants set out the charter of the said Central Railroad Company and various acts of Assembly supplemental thereto, whereby it was provided, *inter alia*, that the said railroad should be operated by directors to be elected by the stockholders, and that the net

earnings of the company should be distributed among the latter. They then proceed to aver that under these different acts of Assembly the railroad of the Central Company was constructed and operated by that company until some time in the year 1877, when, the company having become insolvent, the road was placed in the hands of a receiver, who continued to operate the same until very shortly before the execution of the lease complained of, a period of about six years; and that during the time that preceded the appointment of the receiver the road had been operated by the directors of the company, and the stockholders had received in the shape of dividends the net earnings; they then aver, as a legal conclusion, paragraph 25 of the bill (Record, page 15), "that any act or thing done without the consent of all said stockholders (*i. e.* of the Central Railroad Company of New Jersey), or by due process of law, which destroys the powers and control of those trustees (*i. e.* the directors) to whom stockholders have confided their property, or which prevents those trustees from fully and freely performing said trusts, or which in whole or in part substitutes new or other trustees for those selected by said stockholders, or which takes from said stockholders their estate or interest in said properties or their control over them and their management, or transfers the possession and management of the property of said stockholders to another corporation or to any other person, or in anywise changes the scheme of said railroad company or the enterprise in which and to further which the said stockholders advanced and invested their capital, or which limits the productiveness of their property to them and diverts the earnings, or any part thereof, to other persons, natural or artificial, or on any pretense whatever, is a fraud upon said stockholders, *is unlawful as changing the contract between said corporation and said stockholders against their consent, and is absolutely void by the law of the land.*"

The bill then refers to the corporate existence of the Philadelphia and Reading Railroad Company, and its financial condition and prospects, and recites the execution of the said lease, which it is alleged, paragraph 30 of bill (Record, page

18), does in fact operate to produce all the results which in the twenty-fifth paragraph of their bill, already quoted, they had averred would amount to "changing the contract between said corporation and said stockholders."

This lease, the complainants aver, they never assented to, and that without the consent of all the stockholders of the Central Company, and of all who had "embarked in the undertaking in which the said company at the date of said pretended lease was lawfully engaged," the same could be of no force and effect. Then follow paragraphs 35 and 36 (Record, pages 19 and 20), averments as to the taking possession by the said Philadelphia and Reading Railroad Company, under said lease of the railroads and property of the Central Company, and the reception by it of the tolls and income accruing therefrom. The bill then charges, paragraph 37 (Record, page 20), that the individual defendants, though well knowing the illegality of said lease, were actively engaged in diverting the business and traffic of the Central Railroad Company, and the moneys and tolls rightfully belonging to its stockholders, to the Philadelphia and Reading Railroad Company, and the complainants insisted "that said persons last named are (were) bound to account with the said Central Railroad Company and with your orators for all of said tolls and moneys so taken by said Philadelphia and Reading Railroad Company, by, with, or through their furtherance, conniving, and contrivances, and to pay the same to said Central Railroad Company."

The bill concludes with the statement that, by reason of the fact that the lease was made by the directors, and was ratified by the votes of at least four-sixths in value of the stockholders, it would be idle to make any application to either of these bodies to institute suit, and that therefore the complainants were entitled "to bring and maintain this suit in their own names, as well for themselves as for other stockholders similarly situated." The relief sought by the prayers of the bill is:—

I. The surrender and cancellation of the lease.

II. The return by the Philadelphia and Reading Railroad Company to the Central Railroad Company of all the property

that had come into the possession of the former by virtue of said lease.

III. An account of all moneys received by the Philadelphia and Reading Railroad Company by virtue of said lease, the payment over of the same by the said company to the Central Railroad Company, and the payment by the latter company to the complainants of their due proportion.

IV. That the Central Railroad Company should refrain from allowing the Philadelphia and Reading Railroad Company to collect tolls, &c., under said lease.

V. That upon the failure of the Philadelphia and Reading Railroad Company to pay back all moneys taken by it under said lease the said individual defendants should be decreed to pay the same.

VI. The appointment of a receiver for the Central Railroad Company pending the determination of the suit.

The defendants' answer, styled the "Joint and several answer of the defendants," admitted the ownership by complainants of the shares of stock of the Central Railroad Company, the facts that the Central Railroad had been constructed under the statutes referred to by complainants, that it had been operated thereunder for some years by directors chosen by the stockholders, and that during a portion of such time the stockholders had received dividends upon their stock.

It averred further, however (Record, page 61), that as to legislation subsequent to the date of the act under which the said company was incorporated, "it was part of the scheme and enterprise of the company and of the corporators that the charter of the corporation should be subject to alteration, suspension, and repeal in the discretion of the legislature."

(NOTE.—By the act of New Jersey, of February 4th, 1846, it was enacted "That the charter of every corporation which shall hereafter be granted shall be subject to alteration, suspension, or repeal in the discretion of the legislature." The original act of incorporation of the Easton and Somerville Railroad Company (now the Central Railroad Company of New Jersey) was passed February 26th, 1847.)

The failure of the Central Railroad Company, the appointment of a receiver, and his discharge, are also admitted. It is then averred that at the annual meeting of the stockholders of the Central Railroad Company, held May 11th, 1883, the directors, by a vote of one hundred and thirty-eight thousand nine hundred and fifty-one shares against none, were directed to execute a lease to the Philadelphia and Reading Railroad Company; that in pursuance of this direction such lease was executed and delivered, and under it the Philadelphia and Reading Railroad Company entered into possession and received the tolls and income accruing thereunder, and that at a subsequent meeting of the stockholders this action of the directors was ratified by a vote of one hundred and fifty-one thousand eight hundred and twenty-eight shares against four thousand one hundred and twenty-four shares, the total number of shares of said Central Railroad Company being

The answer concludes with the averment "that the said lease from the Central Railroad Company of New Jersey to the Philadelphia and Reading Railroad Company is not invalid under the laws of the State of New Jersey, and they aver that the same is expressly authorized under and by the laws of the said State."

After filing their answer all the defendants joined in a petition to remove the cause to the United States Circuit Court, upon the two grounds of the citizenship of the parties and the subject-matter of the suit.

The citzenship of the different parties was averred to be as follows :—

"That the complainants in said suit, Alfred Mills and John H. Lidgerwood, were, at the time of bringing said suit, and still are, citizens of the State of New Jersey. The defendants are the petitioners above named, and of these the Central Railroad Company of New Jersey was, at the time of bringing said suit, and still is, a corporation created by and existing under the laws of the State of New Jersey. The Philadelphia and Reading Railroad Company was, at the time of bringing said suit, and still is, a corporation created by and existing under the laws of the State of Pennsylvania; and of the other defendants

Franklin B. Gowen, Joshua B. Lippincott, Henry Lewis, Isaiah V. Williamson, Edward C. Knight, and Joseph B. Altemus, were, at the time of bringing said suit, and still are, citizens of the State of Pennsylvania; Henry S. Little and John Kean were, at the time of bringing said suit, and still are, citizens of the State of New Jersey; Robert Garrett was, at the time of bringing said suit, and still is, a citizen of the State of Maryland, and Theodore F. Randolph was a citizen of the State of New Jersey."

The averment as to the subject-matter of the suit was as follows:—

"That the controversy in said suit is, moreover, one arising under the Constitution and laws of the United States, in that the right to make said lease is rested by the defendants upon a certain statute of New Jersey approved March 11th, 1880, which provides, *inter alia*, as follows:—

'It shall be lawful for any corporation, incorporated under this act, or under any of the laws of the State, at any time during the continuance of its charter, to lease its road, or any part thereof, to any other corporation or corporations of this or any other State, or to unite and consolidate as well as merge its stock, property, and franchises and road with those of any other State, or to do both; and such other company or companies are hereby authorized to take such lease, and to unite, consolidate, as well as merge its stock, property, franchises, and road with said companies, or to do both; and after such lease or consolidation the company or companies so acquiring said stock, property, franchises, and road may use and operate such road, or all or any of them, and transport freights and passengers over the same, and take compensation therefor, according to the provisions and restrictions contained in this act, notwithstanding any special privilege heretofore granted, or hereafter to be granted, to another corporation for the transportation of freights and passengers between any points on the lines of said road, or any other points within or without this State,' which said statute, it is contended by the complainants, is null and void, in that it attempts to alter and amend charters of incorporated companies without the consent

of all the stockholders of said companies, and is therefore violative of the provision of the Constitution of the United States that no State shall pass any law impairing the obligation of contracts."

The defendants having filed with the petition the requisite bond, duly entered in the Circuit Court a copy of the record of the suit, and thereupon the complainants below, appellees here, moved to remand, which motion the Circuit Court granted.

II. SPECIFICATIONS OF ERROR.

I. The court below erred in remanding the suit to the Court of Chancery of New Jersey.

II. The court below erred in deciding that the suit was not one arising under the Constitution or laws of the United States.

III. The court below erred in deciding that the suit was not one in which there was a controversy between citizens of different States.

IV. The court below erred in deciding that the suit did not raise the question whether or not the act of the State of New Jersey, approved March 11th, 1880, which enacted as follows, "It shall be lawful for any corporation incorporated under this act, or under any of the laws of the State of New Jersey, at any time during the continuance of its charter to lease its road, or any part thereof, to any other corporation or corporations of this or any other State, or to unite and consolidate as well as merge its stock, property, and franchises and road with those of any other State, or to do both; and after such lease or consolidation the company or companies so acquiring said stock, property, franchises, and road may use and operate such road, or any or all of them, and transport freight and passengers over the same, and take compensation therefor," impaired the obligation of the implied contract existing between

the stockholders of a corporation and the corporation itself, and was therefore in violation of the Constitution of the United States.

V. The court below erred in deciding that the question raised in said suit whether the Philadelphia and Reading Railroad Company (a corporation of the State of Pennsylvania) was not bound to account to the Central Railroad Company of New Jersey (a corporation of New Jersey) for certain moneys, &c., received by the former, was not a controversy in said suit between citizens of different States.

VI. The court below erred in deciding that the question raised in said suit whether the acts of the individual defendants had not rendered each of them personally liable for such amount as should be found to be due by the Philadelphia and Reading Railroad Company to the Central Railroad Company in the event of the failure of the former company to pay the same, did not involve separate controversies between the complainants and the Central Railroad Company of New Jersey, upon the one side, and each of the said individual defendants on the other.

III. BRIEF OF ARGUMENT.

I. The appellants contend that the pleadings in this case present a Federal question (see Act March 3d, 1875, section 2).

The substantial complaint in the bill is that the Central Railroad Company of New Jersey had without authority of law leased its railroad and franchises to the Philadelphia and Reading Railroad Company.

It sufficiently appears, from the averments in the bill, that the lease was authorized by a large majority of the stockholders (see section 27, Record, page 16, section 34, Record, page 19), taken in connection with the averments in section 38 (Record, page 21), "that the owners of fully four-sixths of the said capital stock have in effect authorized by said vote of their stock the execution of the said pretended lease and contract."

There is no reference in the bill to any statute of New Jersey authorizing the execution of the lease, and consequently no averment as to the invalidity on any grounds of such a statute.

It is, however, averred that "any act or thing done without the consent of all the stockholders (of the Central Railroad Company), or by due process of law, which * * * transfers, the possession or management of the property of said stockholders to another corporation, or to any other person, or in any wise changes the scheme of said railroad company, or the enterprise in which, and to further which, the said stockholders advance and invest their capital, or which limits the productiveness of their property to them, and diverts the earnings or any part thereof to other persons, natural or artificial, on any pretense whatever, is a fraud upon said stockholders, *is unlawful as changing the contract between the said corporation and said stockholders against their consent, and is absolutely void by the law of the land.*" (See section 25 of bill at foot of page 15 of Record); and in a subsequent section (30th page 18 of the Record), it is insisted that the lease does in fact take from the said stockholders of said Central Railroad Company of New Jersey, including your orators, their estate and interest in the said railroad and properties, and their control over the same * * * and does in fact convey the possession and management of said property to another and a financially embarrassed corporation, and does in fact change materially the scheme of said railroad company," &c., &c.

If this is not an averment that the execution of the lease was unlawful because of its "changing the contract between the said corporation and said stockholders against their consent," it is not easy to see how such an averment could be made.

The learned judge of the court below erred, therefore, in saying, "They (the complainants) do indeed charge that the lease is void, and has been executed contrary to law, but they make no specific statement in what respect or upon what ground it is illegal." (Record, page 17.)

The same mistake is made in Mr. Pitney's brief, where, after saying that the bill makes no assault on the act set forth in the

petition, he adds that the bill "nowhere charges any impairment of contract;" although there would seem to be an apparent inconsistency between this and what follows, viz.:—"No contract is set up in the bill except that of the grant of the franchise by the State to the corporation, and that arising by implication from the relations of the stockholders with the corporation." (See Mr. Pitney's brief, page 11.)

The answer avers that the lease was authorized by a vote of one hundred and thirty-eight thousand nine hundred and fifty-one shares without a solitary dissent (Record, page 67), and was subsequently sanctioned by a vote of one hundred and fifty-one thousand eight hundred and twenty-eight shares, against a vote of four thousand one hundred and twenty-four shares (Record, page 70), and it further avers that the lease is expressly authorized under and by the laws of the State of New Jersey.

The act authorizing the lease is a general act, and hence it was not specially pleaded in the answer.

It is, however, recited, in the petition (Record, page 74)—and is printed in full in the statement of the case hereto prefixed.

Note.—The Central Railroad Company of New Jersey, originally known as the Easton and Somerville Railroad Company, was incorporated February 26th, 1847, and was of course subject to the provisions of the act of February 4th, 1846, "that the charter of every corporation which shall hereafter be granted shall be subject to alteration, suspension, or repeal in the discretion of the legislature."

(This is referred to in Mr. Pitney's brief, page 11.)

The petition for removal also avers that said statute it is contended by the complainants is null and void "in that it attempts to alter and amend charters of incorporated companies without the consent of all the stockholders of said companies, and is therefore violative of the provision of the Constitution of the United States that no State shall pass any law impairing the obligation of contracts." (Record, page 75.)

This averment is entirely consistent with the pleadings, and alleges no ground of removal that is not apparent on the face of the record.

The plaintiffs, as already shown, contend that the lease is void by the law of the land, "as changing the contract between the said corporation and said stockholders against their consent;" meaning, as the context shows, all the stockholders (Record, page 15). The defendants answer that the lease is "expressly auctorized under and by the laws of the said State (New Jersey.)" (Record, page 72.)

There is a law of the State of New Jersey apparently authorizing the lease, and thus the question whether this law authorizes the impairment of a contract is not only presented but expressly presented.

It was unnecessary that it should have been expressly presented; that is, the plaintiffs should in so many words have alleged that the act was void because it impaired the obligation of a contract.

That was the error which led to the reversal of the order of the court below in Smith *vs.* Greenhow, 109 U. S., page 669.

There the defendants pleaded in justification of an alleged trespass in seizing the plaintiff's goods that he (the defendant) had levied on the goods for certain taxes due by the plaintiff, the plaintiff replied a tender in coupons, which by a statute of Virginia were made receivable in payment of taxes, the defendant rejoined that by a later statute he was forbidden to receive the coupons, and the plaintiff demurred.

The plaintiff then had the case removed to the Circuit Court of the United States, and on its being remanded took a writ of error to this court.

As appears from the printed record, the learned judge of the court below, while fully recognizing the doctrine that, if a Federal question was but even one of several ingredients the case was removable, thought that the suit was "a mere action of trespass for damages in which no question of a Federal character was raised by the pleadings" (see Record, page 23); his idea evidently being that the demurrer did not in terms allege that the statute pleaded in the rejoinder was in conflict with the clause of the Constitution of the United States which forbids any State passing a law impairing the obligation of a contract.

But this court reversed the remanding order, saying through Mr. Justice Matthews that upon the record no ground of the invalidity of the statute could be inferred except that it was avoided by the operation of the constitutional provision above referred to. *Ibid.*, page 670, 671.

Here, with a statute of New Jersey in full force which authorizes one railroad company to lease its railroad to another, a bill of dissenting stockholders alleges that a lease so made with the approval of a large majority of the stockholders is invalid.

What inference can there be except that the validity of the statute is denied, and denied for the only plausible reason apparent, viz., that it violates the contract rights of the complainants?

It is well settled, no doubt, that on a writ of error to the State court "it must appear affirmatively on the face of the record not only that the Federal question was raised and presented, but that it was decided, or that its decision was necessary to the judgment or decree rendered."

Chouteau *vs.* Gibson, 111 U. S., page 201; but when the question is as to the right to remove a suit from a State to a Federal court, this rule is inapplicable.

When the removal is applied for there obviously can be no question as to what was decided in the State court, although it may be possible to surmise that if the record had remained in the State court a decision might have been reached without touching the Federal question.

The Federal court would not, of course, make an experimental adjudication for the purpose of ascertaining whether the surmise was well founded, and if the rule in question is applicable at all, the result must be that no suit is removable unless it appears from the record that the decision must inevitably turn upon a point of Federal law.

A requirement of such stringency would practically annul the statute, since the cases must be rare in which the pleadings present exclusively a single question of Federal law.

In Smith *vs.* Greenhow (just cited), the demurrer was thought to raise a single Federal question; but if in fact the statute in controversy might have been impeached on the

ground of its being inconsistent with some provision of the State Constitution, such for instance as a provision regulating the title of statutes, would the case have been beyond the jurisdiction of a Federal court?

If the trial or hearing in the Federal court of a suit removed from a State court should not develop any Federal question, the suit could be dismissed or removed to the court from which it had been removed. (Section 5 of Act of March 3d, 1875, 18 Statutes at Large, part 3, page 472.)

In Mayor *vs.* Cooper, 6 Wallace, 247, where a suit had been removed to the Circuit Court of the United States, under the acts of March 3d, 1863 (12 Stat., 756), and May 11th, 1866 (14 Stat. 46), and where the order of the Circuit Court remanding the record to the State court was reviewed here on a writ of error, Mr. Justice Swayne delivering the opinion of this court said:—

"Nor is it any objection that questions are involved which are not all of a Federal character. *If one of the latter exists, if there be a single such ingredient in the mass, it is sufficient. That element is decisive upon the question of jurisdiction.* Page 252.

It may be remarked that in that case, which was a suit in trespass *vi et armis*, the petitions for removal alone disclosed that the defendants justified under an order of the President of the United States, and these petitions did not admit that any trespass had in fact been committed. There was nothing, therefore, to prevent the defendants from shaping their defense in the Federal court so as to put in issue the mere fact of the trespass, and yet this possibility did not preclude their right of removal.

A defendant in trespass may have a perfect justification, but as the law does not compel him to confess, he may formally deny the trespass and rely alone upon the plaintiff's inability to prove his case.

In Railroad Company *vs.* Mississippi, 102 U. S., page 135, Mr. Justice Harlan delivering the opinion of the court says: "That it is not sufficient to exclude the judicial power of the United States from a particular case that it *involves questions which do not all depend on the Constitution or laws of the United*

States, but when a question, to which the judicial power of the Union is extended by the Constitution, forms an ingredient of the original cause, it is within the power of Congress to give the Circuit Courts jurisdiction of that cause, although other questions of fact or of law may be involved in it." Page 141.

There were there two separate controversies one arising under the State law, the other under the Federal law, and the existence of the latter was held to be sufficient to sustain the removal. The case, in fact, was like that of a writ of *quo warranto*, issued by a State court to test the right of a bridge company to maintain a bridge over a stream, and where the defendant had pleaded, first, its State charter authorizing such a construction, and, secondly, an act of Congress authorizing any bridge company, duly incorporated for that purpose, to erect such a bridge. And where matter of the second plea was alleged as a ground for removing the suit to a Circuit Court of the United States.

"If a Federal law is to any extent an ingredient of the controversy, by way of claim or defense, the condition exists upon which the right of removal depends and the right is not impaired because other questions are involved, which are not of a Federal character. Per Wallace, J., in Western Union Telegraph Co. *vs.* National Tel. Co., Circuit Ct. S. D. of New York, 19 Federal Reporter, page 561, citing Cruikshank *vs.* Bank, 16 Fed. Rep., 888; Mayer *vs.* Cooper, 6 Wallace, 247, 252; Railroad Co. *vs.* Mississippi, 102 U. S., 135."

The language of Chief Justice Waite, in the case of Gold Washing & Water Co. *vs.* Keyes, 96 U. S. Rep., 199, when considered in connection with the facts of the case, is not in conflict with the decisions above referred to. There the proceedings had been instituted in a State court of California, by Keyes and others, owners of lands bordering on the Bear river, to restrain the company from depositing in the channel of the river debris and tailings from their mines. The defendants demurred to the complaint, and then petitioned for the removal of the cause, alleging in their petition that they claimed to work their mines under the provisions of certain designated acts of Congress, and that the determination

of the question would "necessarily involve and require the construction of the laws of the United States above mentioned, as well as the pre-emption laws of the United States." This court, in disposing of the question of the right of removal did not hold, as intimated in the brief of Mr. Pitney, that in the consideration of that question resort could not be had to the petition, and that the court must confine themselves to the other pleadings, on the contrary, they held just the reverse, for they say at pages 201 and 202: "Upon the pleadings alone it is clear the defendants had not brought themselves within the statutes (*i. e.* Removal act of 1875). * * * No rights were asserted under the Constitution or laws of the United States, and nothing was stated from which it could in any manner be inferred that the defendants sought to justify the acts complained of by reason of any such authority. * * * The validity of the judgment of the Circuit Court, therefore, depends upon the sufficiency of the facts set forth in the petition for removal. For the purpose of the transfer of a cause, the petition for removal, which the statute requires, performs the office of pleading. *Upon its statements, in connection with the other parts of the record, the courts must act in declaring the law upon the question* IT *presents.* It should therefore set forth the essential facts not otherwise appearing in the case, which the law has made conditions precedent to the change of jurisdiction. If it fails in this, it is defective in substance and must be treated accordingly." And it was because the petition was thus defective in not averring the existence of facts entitling the defendants to the protection afforded by the statutes pleaded, that the court decided against the right of removal. The question whether or not such a state of facts did or did not exist was of course not a Federal question. That this was the ground upon which the court proceeded will sufficiently appear from the following portion of the opinion (page 203).

"Certainly an answer or plea containing only the statements of the petition would not be sufficient for the presentation of a defense to the action under the provisions of the statutes relied upon. The immunities of the statutes are, in

effect, conclusions of law from the existence of particular facts. Protection is not afforded to all under all circumstances. In pleading the statute, therefore, the facts must be stated which call it into operation. The averment that it is in operation will not be enough, for that is the precise question the court is called upon to determine. The statutes referred to contain many provisions, but the particular provision relied upon is nowhere indicated. A cause cannot be removed from a State court simply because in the progress of the litigation it may become necessary to give a construction to the Constitution or laws of the United States. The decision of the case must depend upon that construction. The suit must, in part at least, arise out of a controversy between the parties in regard to the operation and effect of the Constitution or laws upon the facts involved." It would seem evident from these citations that what the court meant to decide and what they did in point of fact decide was that to justify the removal the case must embrace some one question, the decision of which must necessarily involve the construction of the Constitution or laws of the United States; not as contended for by Mr. Pitney, that it must be made to appear that the case cannot possibly be determined without this determination of a Federal question. Such a doctrine would be inconsistent not only with the express decisions of this court already referred to but with the language of the opinion itself.

In People of the State of Illinois *vs.* Chicago, &c., R. R. Co., 16 Fed. Rep., 706, it was held by Judges Harlan, Drummond, and Blodgett that where a railroad corporation sets up as a defense that its charter was a grant by the State, giving to it without qualification the right to prescribe upon what terms and at what rates freight should be transported on the road, and that the grant was protected by the Constitution of the United States, and that a subsequent statute of the State upon the subject, for a violation of which the action had been brought, impairs the validity of such grant in violation of the Constitution, such defense involves a question arising under the Constitution of the United States, and the case is removable from a State court under the act of March 3d, 1875.

"Whether the act of the legislature of this State of 1873," says Judge Drummond, "does impair that grant, is not for us now to decide. The only question is whether a claim can fairly be made under it so as to raise a constitutional question. We think there can be no doubt that a constitutional question does arise in this case, and therefore this court, under the act of Congress of 1875, can take jurisdiction, and the motion to remand is consequently overruled."

The real question at issue in the present case is, whether the statute of New Jersey authorizing railroad companies to lease their roads to other railroad companies, impairs the obligation of the contract contained in the charter of the Central Company, and, although it is believed that the court will hold that there is no contract, express or implied, in the charter inconsistent with the right of the majority of the shareholders to lease the road, yet such a decision would involve a Federal question. This was expressly held in the case of The Bridge Proprietors *vs.* The Hoboken Company, 1 Wallace, 116, where the Supreme Court of the United States held that their jurisdiction to review the judgment of a State court overruling the objection that a contract had been impaired by State legislation, was not ousted by the records disclosing that the court below had held that there was no such contract as that alleged by the plaintiff in error.

See to the same effect Smith *vs.* Greenhow, 109 U. S. Rep., 669.

But what questions are involved in this suit other than the Federal question as to whether the leasing act is void upon the ground of its impairing the obligation of a contract?

If it was consistent with and part of the charter contract that the State might authorize a majority of the stockholders to lease their road, can it be seriously said that the making of the lease raised questions as to breach of trust on the part of the directors, and as to unlawful appropriation of the plaintiffs' property?

It is said that the complainants "apprehend no difficulty in obtaining the judgment of the State court that the leasing act is violative of Article 4, Section 7, subdivision 4 of the Con-

stitution of the State of New Jersey, and that the act in question does not, expressly or by implication, authorize the alleged lease and the acts complained of, without the consent of the complainants." (Mr. Gummere's brief, page 4). The constitutional provision referred to is that requiring that every law "shall embrace but one object, and that shall be expressed in the title."

The application of this provision to the leasing act of 1880 cannot be argued here, but on reading the act, and the act to which it is a supplement, it is not easy to see how any question of inconsistency can arise.

The other point is that the act of 1880, in authorizing railroad companies to lease their roads, meant that the companies should act, not through the votes of a majority of their stockholders, but through the votes of *all* the stockholders.

The difficulty here presented can hardly be said to rise to the dignity of a question.

II. But the act of 1875 makes provision for the removal of suits, without regard to their subject-matter, upon the ground of citizenship, and in the present case the right of removal is asserted upon the ground of the citizenship of the parties, as well as of the subject-matter of the suit.

The rules relating to the right of removal as dependent upon the citizenship of the parties, so far as they have been settled by this court, may be stated as follows:—

If the parties to the suit can be placed on opposite sides of the real controversy, disregarding the mere form of the pleadings, so that all on one side are found to be citizens of different States from all on the other, the cause may be removed under the first clause of the act of March 3d, 1875.

Where a suit embraces two or more controversies, one of which is between citizens of different States, while the others may be between citizens of the same State, if the former is a separable controversy which can be fully determined without the presence of the parties to the latter, then either of the parties to the former may under the second clause of the above-mentioned section, remove the whole case. Barney *vs.* Latham, 103 U. S. Rep,, 205.

Adopting the above rules as a guide, the defendants contend that the suit is removable for the following reasons:—

(*A*) *Because, treating the individual defendants as merely formal parties to the main controversy in the case, and their citizenship consequently as immaterial, the controversy must be viewed as one between the plaintiffs and the Central Company, both citizens of New Jersey, upon the one hand, and the Reading Company, a citizen of Pennsylvania, upon the other; for in a stockholders' bill of the kind before the court, the company in which the plaintiffs are stockholders is a necessary party defendant, but the interests of the stockholders and the company are identical, and they represent one side of the controversy, and the company against whom the accounting and relief are sought, represent the other.*

The last clause of the above proposition is taken *verbatim* from the syllabus of the case of the Board of County Commissioners of Arapahoe County *vs.* Kansas Pacific Ry. Co. *et al.*, a case decided by Mr. Justice Miller while sitting in the United States Circuit Court for the District of Colorado, and reported in 4 Dillon's Cir. Ct. Rep., page 277.

The bill in this case is filed to obtain relief for the Central Railroad Company of New Jersey.

The decree prayed for is that property now in the possession of the Reading Company shall be restored to the Central Company.

No suit at law for the recovery of this property could have been maintained except in the name of the latter company, even in a jurisdiction where the distinction between legal and equitable rights was not recognized.

The plaintiffs are neither legal nor equitable owners of the subject-matter of the controversy.

Corporate property may, in a loose way, be said to be subject to a trust for the shareholders, as it is often said to be subject to a trust for the creditors of the corporation, the directors or managers, not the corporation, being trustees.

In this sense, the rights of creditors are superior to those of shareholders; but no one ever supposed that either the legal or equitable ownership of the property was vested in the creditors.

The plaintiffs' right to sue in the present case is founded upon an assumption of their right to represent the corporation.

In Pennsylvania, at least, where the forms of common-law pleading are still adhered to, although legal remedies are employed to enforce equitable rights, a suitor is often allowed to bring his action in the name of the person through or under whom he claims, without the consent of such nominal plaintiff.

Still this nominal plaintiff is for all purposes of the case the real plaintiff; and his relations to the defendant regulate and control the judgment to be given.

This is mentioned merely as an illustration of the position which the plaintiffs here hold to the real defendant, the Reading Railroad Company.

They sue on behalf of the Central Company, just as much as if their bill had been filed in the name of that company but to their use.

Suppose that the directors of the Central Company should even now be convinced of the validity of the plaintiffs' objections to the lease to the Reading Company, and assert their intention to annul it, could they not become plaintiffs and take control of the litigation?

The very statement of the case in the bill shows that the plaintiffs claim the right to sue on behalf of the Central Company, because the company itself will not sue on its own behalf (see section 39 of the bill of complaint).

But the principles applicable to the present question have been so fully stated in the case of Arapahoe County *vs.* The Kansas Pacific Ry. Co., as to render any further discussion of them superfluous.

In that case, the plaintiffs, citizens of Colorado, brought a stockholders' bill in a State court in Colorado, making defendants thereto the railroad company (also a citizen of Colorado), in which the plaintiffs were stockholders, viz., the Denver Pacific Railway Company, and also the directors thereof, including two directors, citizens of Colorado, against whom, however, no charges were made, and no relief asked; also

making a defendant another railroad company, viz., the Kansas Pacific Railway Company (a citizen of Kansas) and certain individuals, all citizens of other States than Colorado. The object of the bill was to secure an accounting in favor of the Denver Pacific Company against the Kansas Pacific Company, and to secure a decree *in personam* against the non-resident directors of the Denver Pacific Company.

The Kansas Pacific Company, and the individual defendants connected with that company, without being joined with the other defendant, applied to remove the suit to the Circuit Court of the United States, under the act of March 3d, 1875; and it was held that the suit was removable. In disposing of the question of the right of removal, Mr. Justice Miller said, "The case then rests upon the question of whether the fact that the Denver Pacific Railway Company is a party defendant, and is a citizen of the same State as the party plaintiff, ousts the jurisdiction of this court, or defeats the right of removal of the other parties, who are citizens of other States. That question does not rest upon the same principle as the case of Messrs. Sayre and Moffat. The Denver Pacific Railway Company is a necessary party to this suit; it is one without which the suit cannot proceed. The main object of this suit, aside from obtaining a temporary injunction and the appointment of a receiver, is to obtain an accounting with the Kansas Pacific Railway Company and other defendants, on an allegation that a majority of the trustees of the Denver Pacific Railway Company have been committing frauds and thus depriving that company of the funds belonging to it. The relief sought is an accounting, and the relief asked is a decree in favor of the Denver Pacific Railway Company for the amount found due upon that accounting. The Denver Pacific Railway Company is a necessary party to that accounting. A party cannot be required to go to all the trouble of accounting and having a decree, when that accounting and decree will not be a valid defense against all parties having any right to call such party to account. If the suit was merely between the county commissioners (plaintiffs) and these trustees, the decree would not protect the trustees, whether they were

decreed to pay over moneys, or whether they were discharged or acquitted. It would be no protection against the Denver Pacific Railway Company in another suit upon the same cause of action. This shows very clearly that the Denver Pacific Railway Company is now a mere nominal party, but is an indispensable party. But, as already stated, the main relief sought in this case will be, if the suit is successful, a decree in favor of the Denver Pacific Railway Company for the amount found due from the other defendants in this case. Now that is an important and significant feature of the transaction. In an action at law a suit could not be maintaned in which the board of commissioners of Arapahoe county should be plaintiffs, and the Denver Pacific Railway Company and these petitioners defendants, in which a judgment should be asked for $100,000 in favor of the Denver Pacific Company against itself, and its co-defendants. The court would say, you cannot make two defendants litigate before a jury, and get a verdict as between themselves, while the party who brought the suit looks on as having no interest in the transactions. But the flexibility of the mode of proceeding in a court of chancery is such that for the attainment of justice you may, in some instances where the party is not before the court, make him a defendant when he will not be a plaintiff. You cannot compel him to hazard the results of a defeat, though his presence in the court may be necessary for the rights of somebody else, and his rights be with the plaintiff in the case. In suits at common law he would be there as plaintiff, if there at all. By the rules and practice in equity the court allows him to be defendant in the case; but the mere fact that he is placed as defendant instead of plaintiff in an action of chancery, never changes his relation to the controversy in the case, and it is very clear that the interest of the Denver Pacific Railway Company is the interest of the plaintiffs. That their interest is identical; that the board of county commissioners are using the name of the Denver Pacific Company to carry on this suit solely for the benefit of that company. The Denver Pacific Company, being in the control of the defendants, refused to bring this suit, and the complainants' stockholders of that

company, were of necessity compelled to make it a defendant that it might be brought before the court; but when before the court, the company is entitled to recover against the other defendant. The complainants recognize this themselves, for in their prayer for relief, they say expressly what they pray for is a decree in favor of the Denver Pacific Railway Company against the Kansas Pacific Railway Company and the other defendants. Now, the controversy in this case, is one in which the commissioners of Arapahoe county and the Denver Pacific Railway Company are on one side, citizens of the State of Colorado, against all the other defendants. And all the other defendants are citizens of other States, except Sayre and Moffat, and the controversy, in the language of the Constitution and of the statute, is one between citizens of the State of Colorado and citizens of other States; and therefore, within the meaning of the Constitution of the United States, and within the meaning of the statutes under which this removal is sought."

The present case is, it is submitted, identical in principle with the one just referred to.

In Mr. Pitney's brief, page 3, it is said that this case was an extreme one. The action was brought by the county in the court of the county. Every individual in the county was interested, and there was great danger that injustice would be done and the court very properly went to the extreme limit of its power to retain the case in the Federal Court.

But certainly we cannot presume that the Circuit Court varied the interpretation of an act of Congress for any such reason.

The question, however, is whether that case is distinguishable from the present.

It is evident from the report in 4 Dillon, that the plaintiffs there alleged that the property of the Denver Company in which they were shareholders had been unlawfully appropriated to the benefit of the Kansas Company, and that this had been done through the agency of a majority of the governing board of the latter company (see page 283, at foot of page). *Prima facie* the Denver Company was the party that should

have applied for redress: and if it had been willing to apply, the plaintiffs as shareholders would have had no status in court. But the difficulty was that the Denver Company, acting as it only could act, through its governing body, refused to interfere, and this very refusal, which authorized the plaintiffs to sue on behalf of the company, was itself a violation of corporate duty, or, as the counsel of the appellees here prefer to call it, a breach of trust.

The very right of the plaintiffs to sue was therefore founded upon the so-called breach of trust on the part of their corporation in refusing to protect the corporate property; and besides, how is it possible to say that the wrong which the bill sought to redress was not a wrong done by the Denver Company in its corporate capacity to its stockholders in the same sense as the wrong here complained of is said to have been done by the Central Company to its stockholders?

The Denver Company acted through its trustees in its dealing with the Kansas Company, just as the Central Company dealt through its directors in dealing with the Reading Railroad Company.

The wrong alleged in either case involved a liability on the part of the corporation, which was or is the real defendant, to account to the corporation, which, although a defendant was or is through its representation by its stockholder, a plaintiff, although an unwilling one.

It is true that in our case the bill prays for a restoration to the Central Company of *property* alleged to have been unlawfully alienated by it; but can it be pretended that, if this element had existed, in the other case, it would have produced a different result?

Indeed, it may have existed for aught that can be inferred to the contrary from the report.

It is to be inferred, too, that the Denver Company was an active litigant against the plaintiffs, since its action would, necessarily, be in accordance with the disposition of the majority of its managers; and we cannot assume that it passively occupied the position of a defendant, for the sake of enabling the plaintiffs to sue in a court of the United States.

At all events, its real animus as a litigant was immaterial. It was held to be a necessary party to the cause, and the court could not have assumed that it was a passive ally of the plaintiffs; for such a presumption would have been fatal to the plaintiffs' claim to sue, irrespective of any question of citizenship.

In the opinion of the learned judge of the court below in this case, it is said "that all the material defendants against whom relief was asked were citizens of other States. There was nothing to be adjudicated against parties living in the same State. But in this case the suit is against the Central Railroad Company, and a number of individuals, some of whom are citizens of different States, and specific relief is prayed against the acts of the corporation and of the individuals who are made defendants." (Page 79 of Record).

As the Central Railroad Company stands in precisely the same position as the Denver Pacific Railway Company did in the case in 4 Dillon, these remarks must have been intended to apply mainly to the individual defendants.

It is true that of the individual defendants, two, viz., Henry S. Little and John Kean, citizens of the same State as the plaintiffs—New Jersey—were probably meant to be included in the prayer that "the said defendants may be decreed to pay to your orators (the complainants) all damages which your orators have sustained by reason of the aforesaid illegal acts of the said defendants, &c.," and were undoubtedly meant to be included in the prayer "that upon the failure of the Philadelphia and Reading Railroad Company to pay back to the said The Central Railroad Company of New Jersey all the moneys already taken or which may be taken by virtue of the said pretended lease, the said individual defendants may be decreed to pay the same to the said Central Railroad Company of New Jersey." (Record, page 23.)

But to use the language of Mr. Justice Miller in the Arapahoe county case with regard to the two individual defendants there, were Messrs. Kean and Little "*necessary* adverse parties to the complainants in this suit."

This will hardly be contended, for nothing seems plainer

than that the decree sought against the Reading Company could be made in the absence of all the individual defendants. The controversy between the plaintiffs and the Reading Company was and is an entirely distinct and separate controversy from the suppositious controversy between the plaintiffs and the individual directors of the Central Company who are made parties to the bill.

The omission of Messrs. Kean and Little as defendants would not have prejudiced the plaintiffs in the least.

In fact the bill omits to make parties defendant three gentlemen, Messrs. Sheppard, Sloan, and Todd, who are enumerated among the list of directors of the Central Railroad Company—who executed and delivered the lease to the Reading Company. See Record, page 17.

Were they not as much necessary parties as the three directors? And yet it would be idle to object to their having been omitted.

Suppose that the Central Railroad Company had in fact filed the bill against the Reading Company to have the lease annulled and the property restored, could it have been pretended that the right of the Reading Company to remove the suit into the Federal court could have been defeated by making one or more of the directors of the Central Company who were citizens of New Jersey co-defendants, upon the theory that they had wrongfully made the lease, and were therefore personally liable to their own company?

Within the very words of the statute there is in this suit "a controversy which is wholly between citizens of different States, and which can be fully determined as between them." 18 Stat., page 471.

On the question of the position occupied by directors who are made co-defendants in a bill to enjoin some alleged unauthorized act on the part of a corporation, reference is also made to the cases of Pond *vs.* Sibley, 7 Federal Reporter, 129; National Bank of Lyndon *vs.* Wells River Co., *Ibid.*, page 750; Hatch *vs.* Chicago Ry. Co., 6 Blatchford, 105.

But, assuming that the plaintiffs are litigants on their own account and not on account of the Central Railroad Company

of New Jersey, and assuming also that the individual defendants, Messrs. Little and Kean, are to be treated as necessary parties to the suit by reason of the relief prayed against them personally, it is contended that, besides the main controversy, the case involves a contention between the plaintiffs and the individual defendants, in which there is a separate controversy between the plaintiffs and each of the individual defendants.

Of course it is not admitted that the theory on which individual directors of either company are to be held responsible is correct in point of law, or that the averments of fact in the bill are such as to render the theory applicable even if it were correct; but, taking the case as presented, it charges the individual defendants with "diverting the business and traffic of the said Central Company of New Jersey, and the moneys and tolls earned by said company * * * to the use, benefit, and behoof of the said Philadelphia and Reading Railroad Company." (See section 37 of the bill.)

It is not alleged that this was done in violation of any contract made by the defendants jointly, and the ingenuity of even the proponents' counsel would be at fault in attempting to establish a contractual relation between the individual defendants and either the Central Company or any of its shareholders.

The individual defendants must therefore be treated as tort-feasors, and in this view of the case it is to be remarked that there is no averment that they were joint tort-feasors.

For aught that appears there was no community of action between them; and each therefore would be but severally responsible.

It is not suggested that the wrongs complained of were the result of any official and therefore presumably joint action on the part of the individual defendants.

Indeed, the bill seems carefully to omit any averment as to the official position of Messrs. Lippincott, Lewis, Williamson, and Altemus; and although the other individual defendants are included in the list of directors of the Central Company given in section 28 of the bill, yet, evidently, they were not made defendants, because they were such

directors, since their associates Messrs. Sheppard, Sloan, and Todd are omitted.

But, assuming that the individual defendants co-operated with each other in "diverting the business and traffic" of the Central Company, the authorities cited on the oral argument against the motion to remand, show that the plaintiffs' complaint contains a several and separate controversy with each defendant.

In Langdon *vs.* Fogg, 18 Fed. Rep., 5 (Cir. Ct. Southern Dist. N. Y.), the plaintiff, a stockholder in a company, had instituted a proceeding in equity against the company and five individuals, trustees of the company at the time of the commission of the alledged illegal acts complained of, to compel an accounting by the individual defendants for the full value of certain shares of stock alleged to have been wrongfully issued by them, and for all gains and profits received from the sale of the same. The plaintiffs and three of the defendants were citizens of the State of New York; one of the defendants was a citizen of New Jersey, and upon his petition the cause was removed to the Circuit Court of the United States for the Southern District of New York. A motion to remand the same to the State Court was denied.

In his opinion, Judge Brown said, that "if the illegal issue of stock (for which redress was sought against the directors) be viewed as wasting or misapplying possible property or means of the corporation through the joint action of the trustees, it would present the case of a joint and several tort, and the decision in Kerling *vs.* Cotzhausen, 16 Fed. Rep., 705 (11 Bissell, 582), in which Mr. Justice Harlan concurred, would be controlling that the first branch of the complaint would also be severable at the option of the non-resident defendant." (See page 9.)

In Barney *vs.* Latham, 103 U. S. Rep., 205, the plaintiffs were the heirs at law of one who they claimed had been a joint owner with the individual defendants of a large tract of land, which after his death had been conveyed by his former associates to a land company, also a defendant in the suit. The bill filed sought to compel the individual defendants to

account for all sums due the plaintiffs on account of any land sales made by them prior to the conveyance to the land company, and to compel the latter to convey the portion of the lands claimed by the plaintiffs. The Supreme Court held that the controversies were separable, and that, as the requisite citizenship existed as to the individual defendants, the cause was removable upon their petition, though the land company was a citizen of the same State as the plaintiff.

In Clark *vs.* R. R. Cos., 11 Fed. Rep., 355, the plaintiff, a citizen of Minnesota, had sued two railroad companies, one a corporation of Minnesota, the other of Wisconsin, jointly, to recover damages for personal injuries received. Upon the petition of the Wisconsin company, the cause was removed to the Circuit Court of the United States, and a motion to remand the same was denied. Nelson, D. J., said: "Each defendant was liable as a wrongdoer, if the plaintiff proved his case, and the controversy was severable. The plaintiff could have sued either, without the other being a necessary party, or, as he did, sue both as joint wrongdoers. This is a legal privilege the plaintiff could exercise; but he cannot, by joining in the suit the non-resident defendant, debar him from asserting a right given by the act of 1875. The act of each defendant is several in its nature, although the plaintiff has an election to sue one or both tortfeasors."

In Sheldon *vs.* Keokuk Northern Line Packet Co. *et al.*, 9 Bissell, 307, a case in which the complainants had filed a bill alleging that their judgment debtor had fraudulently conveyed certain property to one of the defendants, and certain other property to another of the defendants, and praying that the same might be subjected to their demands, it was held that the controversies were separable.

In Kerting *vs.* Cotzhausen *et al.*, 11 Bissell, 582, it was held by Judges Harlan, Drummond, and Blodgett that, where in an action of trespass brought in the State court against several defendants, one of whom is a citizen of a different State from that of the plaintiffs, and other citizens of the same State with the plaintiffs, the citizen of a different State can remove the case to the Federal court on the ground that there is a controversy in the case wholly between himself and the plaintiff.

In the case of Buford *vs.* Strother, 3 McCreary's Reports, 253, it was held by the United States Circuit Court for the District of Iowa, that the right to remove existed under the following circumstances: Plaintiff had obtained judgment in a State court against a corporation and had issued execution which had been returned unsatisfied. Thereupon he commenced proceedings to enforce said judgment against certain directors and stockholders of the corporation upon the ground that by certain acts of theirs they had subjected themselves to the provisions of a statute of the State of Iowa, which rendered them liable personally. The ground upon which the court proceeded was as stated in the syllabus, "that such proceedings involved an independent controversy with new parties against whom the plaintiff seeks to establish a new liability."

But it may be said that the Central Company is a necesssary party to each separate controversy, and that its citizenship is fatal to the jurisdiction of this court.

As the decree sought against the individual defendants is to enure to the benefit of the Central Company, that company was no doubt properly made a party; but its position is really that of a plaintiff, not merely because the actual plaintiffs are sueing by virtue of their right to represent it, but because the relief prayed for is for its benefit.

But, apart from this, the Central Company stands in the position of a custodian, or, as the proponents contend, of a trustee of the railroad property in controversy, and the case in this respect resembles that of Walden *vs.* Skinner, 101 U. S., page 577, where in a controversy between two litigants relating to the ownership of a property held by trustees, and where the object of the plaintiff was to compel a conveyance by the trustees, the citizenship of the latter was held to be immaterial. The report of the case shows that the trustees co-operated with the co-defendant to the extent of making their citizenship the ground of objection to the jurisdiction of the court. The record, however, on being examined shows that, except to this extent, their position was in no wise hostile to the plaintiffs. But the principle on which the question was decided would not appear to be affected by the action or inaction of

the trustees. They were in fact garnishees, who were necessarily required to be parties to a suit concerning the disposition of the property in their possession because the property was in their possession, but not because the controversy between the rival claimants could not have been determined in the absence of the garnishees.

See as to this point the case of Bacon *vs.* Rives, 16 Otto, page 99, and especially the remarks of Mr. Justice Harlan, page 104.

The joinder of defendants, with each of whom the plaintiff has a separate controversy, in a common answer or plea cannot possibly deprive any of the defendants of the right to remove the case from a State court which he or they would otherwise have had.

The separability of a suit against a number of defendants into controversies between the plaintiff and each of the defendants cannot be destroyed by the defendants uniting in alleging either that the declaration or bill shows no cause of action, or that the plaintiff's right of recovery is barred by some extraneous defense. A single joint plea or joint answer may indeed protect all the defendants; but certainly it does not involve them in a common liability. Each may avail himself of the plea or answer so far as it is applicable to his individual case, without thereby assuming any liability for his co-respondents.

It has never been supposed that the test, for removal purposes, of the separability of a suit was to be the joinder or severance of the defendants in their plea or answer; for otherwise the removal should be delayed until the plea or answer had been filed, or the suit if removed should be remanded whenever the defendants joined in their plea or answer.

The appellants seem to admit (Mr. Pitney's brief, page 6) that if the bill in that case had in express terms demanded a several accounting with the individual defendants, the suit would have been properly removable; and certainly they do not mean to qualify this admission by a proviso that each defendant should separately have answered or should answer the averments in the bill.

No authority for such a proposition can be found; although

in one of the cases cited in the original brief, Kerling *vs.* Cotzhausen, 11 Bissel, 582 (16 Fed. Reporter, page 705), where they had severed in their pleas, it was said by the court to have been "*claimed*" that in each separate plea there was an issue made between the defendants filing the plea and the plaintiff which was solely between them, and the statement in Mr. Gummere's brief, at page 10, that the court had adjudged "that a citizen desiring to remove a cause on the ground of a separate controversy, must sever and plead severally in the State court in order to remove the cause into the Federal court, is an entire misapprehension of grounds of the decision.

If a severance in pleading were to be the test of the severability of the causes of action, the matter would be entirely in the control of the defendants.

J. C. Brown
For appellant

113-249

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Supreme Court of the United States.

OCTOBER TERM, 1884.

(No. 878 ADVANCED.)

The Central Railroad Company of New Jersey and The Philadelphia & Reading R. R. Co., Defendants,

Appellants,

and

Alfred Mills and John H. Lidgerwood, surviving Executors of Stephen Vail, deceased, Complainants,

Appellees.

On appeal from decree remanding cause to State Court.

BRIEFS OF

BARKER GUMMERE,

HENRY C. PITNEY,

For Appellees.

Supreme Court of the United States.

OCTOBER TERM, 1884.

The Central Railroad Company of New Jersey and The Philadelphia & Reading R. R. Co., Defendants, *Appellants*, *and* Alfred Mills and John H. Lidgerwood, surviving Executors of Stephen Vail, deceased, Complainants, *Appellees.*	On appeal from decree remanding cause to State Court.

BRIEF OF BARKER GUMMERE FOR APPELLEES.

Statement.

The bill avers (*Clause 25, page 15*) that the Central Railroad Company is *the naked trustee* of the complainants, holding *the legal title* to lands, franchises, tolls, &c., the beneficiary estate and interest in a part whereof is expressly vested in the complainants by the 11th section of the charter of the Central Company. (*Pamp. Laws, 1847, page 133.*) 11. "*And be it Enacted*, That "the President and Directors shall, within one year "after the said railroad shall have been completed, de- "clare and make such dividend as they may deem pru-

"dent and proper of the net profits thereof, and shall, in "like manner, semi-annually thereafter, declare such divi- "dends, and pay the same to the stockholders of the said "company, in proportion to the amount of shares held by "them, respectively, as they may deem prudent and "proper."

This beneficial estate and interest is *the property* of the complainants.

The bill avers (*Clause 29, page 17*) that the Central Company has assumed *to convey* in part, and nominally *to lease* in part for 999 years, (which the bill avers to be in effect a conveyance in perpetuity, (*Clause 30, page 18*) this property of the complainants to the Reading Railroad Company, "*against the complainants' consent and without any authority of law whatsoever.*"

That is, the complainants charge *their trustee*, the Central Company, *with a flagrant breach of trust*, and (*Clause 31, page 18*) that the pretended lease and contract "*was made without any authority of law, and is illegal, inequitable and void.*"

The bill further avers that *Franklin B. Gowen* and five other persons (who are admitted to be *citizens of Pennsylvania*) and *Henry S. Little, John Kean and Theodore F. Randolph*, (who are admitted to be *citizens of New Jersey*) are actively *participating in this breach of trust*, and *in converting the trust property to the use* of the Reading Railroad Company, with full notice of the trust, and avers that these persons are responsible *to complainants* (*Clause 37, A. 20, Q. 42–48*) for all tolls and money so converted. (*Clause 37.*)

The prayer of the bill is, that the alleged lease may be declared to be illegal, fraudulent and void—that the trust property may be followed and redelivered to the trustee, the Central Railroad Company, and that it *may be decreed to again take possession of the trust property and administer the same in conformity to the trusts charged upon it in conformity to the charter and amendments set*

forth in the bill (*Clause 41, page 23 line 25*) and that said trustee unite in taking an account of *the trust funds diverted* to the Reading Railroad Company and that *said trustee pay over to complainants their proportionate share thereof*; and that the individual persons, Gowen and others of Pennsylvania, and Little and others, citizens of New Jersey, may be decreed to pay and make good all such diverted trust moneys as the Reading Railroad Company shall fail to pay.

The scope of the bill is to set forth *an existing trust*, to charge upon the trustee a *breach of that trust*, to charge upon the other defendants active participation, with notice of the trust, in the diversion of the trust property from the complainant *cestuis que trust*, and to follow the trust property into the hands of the trust breakers, ob tain its return, in specie, or full compensation for that which cannot be identified.

The defendants have answered *jointly*, and *no one of them has separated* from the others—they make *a common cause* and *a common defence*.

They, *by not denying*, admit the *existence of the trust* set forth in the bill; they admit *the doing* of the acts averred in the bill to constitute breaches of that trust (*Answer, page 65 line 18 to line 41 page*) but deny that they do constitute a breach of trust, and claim that they do no injury to complainants, or, if they are injurious, that the injury can be compensated by paying the damage, and that the trust can be terminated by paying the complainant *cestuis que trust* the present value of their trust property.

The answer further avers, as new matter, that the complainants *assented to and acquiesced in* the breach of trust, and that acts have been done thereunder and rights acquired which cannot be undone, and thus the *status quo* be restored; and it concludes (*Answer, page 71, line 50, to line 8, page 72*) by averring that the trustee had the right to make the lease, and that *the principles of law* invoked by the complainants have no application to the subject matter of the suit; and (*page 72, lines 9-13*)

finally, that the alleged breaches of trust were authorized by the laws of New Jersey.

It will be observed that the *natural* defendant persons, *Gowen, &c., of Pennsylvania*, and *Little, &c., of New Jersey*, admit, by not denying, that they were joint actors with the corporate defendants in the alleged breach of trust.

It is to be noted that the complainants do not invoke the protection of the Federal Constitution, nor impugn the constitutionality of any law of New Jersey. The *defendants* aver that *laws of the State* have been enacted which legalize the administration of the trust by the tustee in the mode in which it is admitted it has administered it. *The complainants* have simply filed their replication, and have taken issue upon this averment.

I

It is obvious that, if a *law or laws of the State of New Jersey* be produced in evidence by the defendants, the complainants will not *necessarily*, within the *San Mateo case, 13 Fed. Rep., 145*, contend that such law or laws are violative of any clause of the Federal Constitution, or ask any construction of that instrument.

On the contrary, if the act they produce shall be the act of 1880, (*Pamp. Laws, 1880, page 231,*) the complainants apprehend no difficulty in obtaining the judgment of the State court that—

1. That act is violative of *Art. 4, section 7, subdivision 4*, of the Constitution of New Jersey. (*Rev., page xxxvii.*)
2. That the act in question does not, expressly or by implication authorize the alleged lease and the acts complained of, without the consent of the complainant *cestuis que trust.*

And if further contention be deemed necessary, the complainants are advised that their counsel will confine themselves exclusively to the construction of the charter or deed of trust under which they are *cestuis que trustent;* section 6 of the Corporation act of New Jersey, (*Rev.*,

page 178,) and the adjudications of the hightest courts of the State, which have repeatedly construed them.

It is submitted that this case does not differ in anywise in principle from any other case in which a *cestui que trust* applies to a court of equity, alleging a trust and breach thereof by the trustee and his co-tort feasors, and praying for redress.

The simple issues are:

1. Is there a trust? That is admitted.
2. Were the acts charged done? That, too, is admitted
3. Were those acts breaches of trust? That is denied, and, by way of estoppel, consent and acquiescence is set up.

I repeat, that in no event will complainants invoke in the State Court the protection or construction of the Federal Constitution. The laws of their own State, and the settled construction thereof by the courts of that State, are their ample protection.

Not only is the construction of the Federal Constitution not *necessarily* involved in the State Court, *but the complainants are determined to shut it out, in order that no appeal may lie from the judgment of the highest State Court.*

II.

Upon the record, *all* the parties defendant are charged as acting together *as principals*—as joint active tort feasors, and stringent and imperative *relief* is specifically sought *against all of them*—not one of them is a *formal* party—on the contrary, if a decree pass against them as prayed, *all* of them will be charged with the performance of serious duties and subjected to serious pecuniary burdens.

The defendants are well aware of this. None of them have filed *disclaimers*, or submitted to a decree *pro confesso;* all have answered, and all unite energetically against the complainants.

The record presents an issue joined between complain-

ants and a trustee citizen of New Jersey (Central Railroad), two citizens of New Jersey, a corporation of Pennsylvania, six citizens of Pennsylvania and one citizen of Maryland, defendants, jointly charged with breach of trust, and with knowingly diverting trust funds. There is no room here for *theories* as to *the position* of the parties; they have locked horns as inveterate antagonists, arrayed *against* each other, the complainants seeking a formidable relief against *all* the defendants, and all the defendants uniting in active resistance thereto.

1. To entitle the defendants to remove the cause *on the ground of the citizenship of the parties to the record*, the defendants must demonstrate to the court that the *Central Railroad Company, Henry S. Little, John Kean and Theodore F. Randolph*, all of whom are *citizens of New Jersey*, are not, *in fact, engaged in any controversy* with the complainants, but either have *interests indentical* with theirs, or are *mere formal parties* to the record.

a. The interests of the complainants are not *derived from* the *Central Railroad Company*, nor does that corporation *represent* them in this controversy.

1. The complainants *hold title* to their proportionate share of the net profits *by an immediate grant from the Legislature.*

   Pamp. Laws, 1847, p. 133, sec. 11.

2. The complainants *hold title* by *an immediate grant from the Legislature*, (*Pamp. Laws, 1847, p. 129, s. 3 and 5*,) to their elective franchise to *vote for the directors*, who shall *manage the trust property and funds.*

3. The compainants *hold equitable title* to their proportionate share of the $28,000,000.00 of accumulated assets and real estate, to which the Central holds the *legal title*, and which it has aliened to defeat the complainants' equitable title; and this equitable title is derived from the legislative grant and the operation of the charter; *so, also*, as to complainants' equitable title to their share in the

franchises, railroads, &c., to which the corporation holds the legal title.

Observe, that *the corporation* is not *the creator* of the trust, but *the legislature* is; *the corporation* is not *the donor* of the *impersonal* trust property, (franchises, &c.,) but *the legislature* is; the *corporation* is not *the donor* of the complainants' share of the *tangible* trust assets, but the complainants' testator himself *entrusted* that share to the corporation.

b. 1. *The controversy* between the complainants and the defendants is not *formal*, but it is that *the trustee*, the Central Company, in concert with the others, has *fraudulently aliened* the legal title, *in breach of the trust*, and *diverted the trust property* to strangers to the trust. How is it possible that a faithless and fraudulent trustee, *arraigned by its cestui que trust*, as by this bill, can *represent* the cestui que trust? The controversy is *actual between them*. The complainants are clearly the *magistri litis*, and control the suit. The corporate trustee is an *actual* defendant, actively arrayed against the complainants, and joined in *real* issue with them.

It is submitted that the Central Company could not *represent* the complainants in *this* controversy, save by an answer denying the averments of the thirty-eighth clause of the bill, and consenting to join as complainants therein.

2. The Central Company in *this* controversy is not *identical in interest* with the complainants; it *holds the legal title* and *asserts legal control* over the trust assets, whilst *admitting the trust* by not denying it in the answer, and *asserts* the legal right *to alien our beneficial interests as cestuis que trust;* we assert that *they have no control* over our equitable beneficiary title and *cannot alien it.* Could there be a more *diametric antagonism of interests* than this?

3. *This* case differs wholly from the case of *Arapahoe v. Kansas Pacific, 4 Dillon, 277.* In that case no *breach of trust* was charged against the Kansas Company, but fraud by some of its directors personally; and no *active relief* was prayed against that corporation. Here *breach of trust* and *fraud* is charged against the Central with prayer for *injunction, decree* that *it resume posession of the trust funds and property,* and *pay the complainants their share* in the net profits. The account is *not the main object* of *this* suit; *the enforcement of the trust,* and of its *continuing performance, in futuro,* is *the main object* of *this* suit, and the account is but an incidental means of relief as to the injury sustained by the *cestui que trust* from *the past* breach of trust.

4. The complainants are not stockholders proceeding *in behalf* of their company, and asserting *its rights* against others, as is ingeniously suggested by the defendants' brief. The complainants are asserting *their own rights* as *cestuis que trust against* the corporation which, in concert with others, is *endeavoring to alien and destroy* their equitable rights; it is not asserting the corporate rights against invasion by others, but in seeking *to compel* the corporation *to perform its duties* to them, and *to execute faithfully its trust* toward them.

5. The citation from *Pond v. Sibley, 7 Fed. Rep., 129,* and the other citations in defendants' brief in the court below are not pertinent to this case.

Here a most significant charge is made against Mr. Gowen and his fellows, of *personally* and *actively* joining in a breach of trust and the diversion of trust moneys, and a *personal* decree is sought against them. If either of them ceased to be a director of the Reading Company, can it be pretended that he would *thereby* escape from liability to the relief sought against him? Surely it is

simply ludicrous to assert that if a man join in a breach of trust while a director he can escape all personal responsibility by resigning his office.

In the case before Judge Blatchford no relief was prayed against the directors personally—the bill was simply *to enjoin* them, *as officers*, from doing *an official act*. The learned judge does not say, as the defendants' brief translates him, that if relief was prayed against them personally for breach of trust, they would not even then be substantial parties; on the contrary he adjudges that it is precisely because no such relief is sought, and that nothing is prayed against them, save *to enjoin them from doing an official act*, that he holds them not to be necessary and substantial parties.

6. But even if Gowen and his associate directors be held not to be substantial parties to this suit, because *merely directors of the Reading Company*, yet there remain *Little, Kean and Randolph, citizens of New Jersey*, who are not affected by any reasoning or citation in the defendants' brief; in fact, there is no pretence that they are sued as directors, or are not *substantial* parties; nor is it pretended that *they* are *identified in interest* with the complainants, nor that there is *no controversy* between *them* and the complainants.

   Yet, unless *they* can be translated from the defendant side to the complainants' side of the controversy, there will still be citizens of New Jersey, arrayed on opposite sides of this controversy, and therefore there can be no removal of the cause under the act of 1875, *on the ground of citizenship*. If *Randolph* has died since the commencement of the suit that does not affect the question. Besides, his personal representatives, who are also citizens of New Jersey, will be substituted as defendants.

III.

But it is contended that the controversy between the

complainants and Little, Kean and Randolph is a *separate controversy* from that between the complainants and the other defendants, and that it is removable for that reason.

1. It will be observed that *all* the defendants are charged with a *joint* breach of trust, and *a joint* diversion of trust funds, with due notice of the trust, and that the relief is prayed against them *jointly*. In this respect this case widely differs from *Langdon v. Fogg, 18 Fed. Rep., 5*, in which there was no averment of *joint* action or liability, and in which the relief prayed was against *each* "for the gains and profits received *by each*."

   No less widely is it different from the case cited from *9 Bissell, 307*, in which it was clear that the alleged fraudulent conveyances to the defendants were wholly separate and independent transactions, and that neither of the defendants had notice of or privity with the transaction with the other.

   In the case before the court all the defendants are charged *jointly* and they *admit* that they *acted jointly*.

2. Nor are the citations from *11 Fed. Rep., 355*, and *11 Bissell, 582*, pertinent to *this* case.

   In the first case the defendants, joint torts feasors, *severed* in pleading; one *demurring*, the other *separately answering*. That is, each made a *separate defence*.

   And the learned judges, in *11 Bissell, 582*, expressly adjudge that a citizen desiring to remove a cause on the ground of a separate controversy, must *sever* and *plead severally* in the State Court, in order to remove the cause into the Federal Court.

   In the present case, the defendants have had their day in the State Court, have declined to

sever, have made *common cause*, a *joint defence* and a *joint answer*, without a single separate clause or separate defence. They have deliberately *elected* to defend *jointly*, and issue is joined. There is no room for any further election.

So, also, in the case cited from *103 U. S. 205*, there was *first* an independent demand by the complainants against the individual defendants, all residents of other States, for a share in the proceeds of lands, *sold by said defendants*; and *second*, an independent demand against a *corporation of the same State*, with the complainant, for a share in other lands *not sold to it by the individual defendants*, but by a stranger; the sales by the individual defendants were anterior in time, even to the creation of the corporation; nor was there a pretence of *privity* between the defendants and the corporation, or of any connection between the transactions.

That case plainly presents controversies respecting wholly separate transactions between wholly separate parties, and at separate times, and the bill therein was clearly *demurrable for multifariousness*.

In the case before this court the wrongful acts were one in time and purpose, and the defendants were joint actors in each and all the acts complained of.

3. The suit cannot proceed in the State court against *Little, Kean and Randolph* or his representatives, unless the *Central* and *Reading* are present as parties in that court. It is essential to their redress that the validity of the *legal title and control* set up by the Central and Reading as *superior to* and *dominant over* the *equitable title* set up by the defendants be determined, for that is *the main controversy*. I have shown that *that* controversy is not removable. The relief sought against Little,

Kean and Randolph *depends directly upon* and is *an inseparable adjunct* of the question of title between the complainants and the Central and Reading.

The case of

Corbin v. Van Brunt, 105 U. S., 576,

is precisely in point.

BARKER GUMMERE,

Counsel for Appellees.

Supreme Court of the United States.

OCTOBER TERM, 1884.

The Central Railroad Company of New Jersey and The Philadelphia & Reading R. R. Co., Defendants, *Appellants,* *and* Alfred Mills and John H. Lidgerwood, surviving Executors of Stephen Vail, deceased, Complainants, *Appellees.*	On appeal from decree remanding cause to State Court.

BRIEF OF H. C. PITNEY FOR APPELLEES.

Three points were made in the Court below by the appellants.

(1.) The individual defendants named in the bill are merely nominal or formal parties, and the case must be viewed as involving substantially only a controversy between the Central Railroad Company of New Jersey (called "The Central Company") and the Phildelphia and Reading Railroad Company of Pennsylvania (called "The Reading Company.")

(2.) Conceding the individual defendants to be substantial parties, yet the controversy between the appellees (complainants) and these defendants is severable.

(3.) The cause involves a controversy arising under the Constitution of the United States.

I.

To the *first* point I make two answers.

First. The Central Company cannot be ranged on the side of the complainant and treated as an *actor* in the controversy. Its position is essentially that of a defendant.

The act complained of—the so-called lease—is necessarily a corporate act, of necessity done and executed under the seal of the corporation.

The contention of the appellees (complainants) is that the corporation was trustee of the corporate property for them, and that in executing the lease it was guilty of a breach of trust; and they seek to have that act annulled and the possession of the property restored to and accepted by the unwilling trustee.

In such an action the position of the guilty and unwilling trustee is necessarily that of *reus*.

Besides, it is submitted that the corporation as such could not have any standing in a court of equity to ask that the lease be set aside on the ground set up in the bill. It could not set up its own breach of trust as a ground for undoing it.

The remedy in such a case is one given to the stockholders—*cestui que trusts*—alone.

The case is clearly distinguishable from *Arapahoe v. Kansas Pacific Railroad*, 4 Dil. Cir. Ct. R. 277.

There, the complainant was asking for an accounting between two railroad companies, and for a judgment in favor of one against the other as in any ordinary action for money, although the action was in equity. Plaintiffs said,—we are stockholders in the Denver Pacific Railroad Company. Another railroad company is largely indebted to our company, which, being through its Directors under the control of that other company, declines to sue, and we are losing dividends, and we wish to compel an accounting and payment. That was the main relief sought.

Justice Miller says:

"But, as already stated, the main relief sought in this "case will be, if the suit is successful, a decree in favor "of the D. P. Railroad Company for the amount found "due from the other defendants."

And again:

"The D. P. Railroad, being in control of the defen- "dants, refused to bring this suit, and the complainants, "stockholders of that company, were of necessity com- "pelled to make it a defendant, but when before the "court the *company is entitled to recover against the other* "*defendants*. The complainants recognize this, for in "their prayer for relief they say what they pray for is a "decree in favor of the D. P. Railroad Company against "the K. P. Railroad Company."

The suit for such accounting might have been brought by the D. P. R. R. Co. as plaintiffs against the K. P. R. R. Co. as defendants, and no corporate act could have been set up in estoppel.

This was an extreme case. The action was brought *by* the county in the court *of* the county. Every individual in the county was interested, and there was great danger that injustice would be done, and the court very properly went to the extreme limit of its power to retain the case in the Federal Court.

The main relief sought in the case in hand is the setting aside and annulling the lease mentioned in the bill.

It is admitted that the Central Company is a *necessary* party. On this part of the case see *Crane v. Ch. & N. W. R. R. Co.*, 20 Fed. R. 402.

Second. The individual defendants are not mere formal parties. Substantial relief is prayed against them in their individual, as contradistinguished from their official capacity as directors.

In *Hatch vs. Chicago R. R.*, 6 Blatch. 105, no relief was prayed against the defendant directors not prayed for against the corporation, and none against them in their individual capacity.

Pond vs. Sibley, 7 Fed. R. 129, is to the same effect and is in effect an authority against appellants.

See the language of Blatchford J., at pp. 134, 135, 136.

II.

As to the *second* point.

The pleadings do not disclose a "*controversy which is* "*wholly between citizens of different States* and which can "be wholly determined as between them," under the second paragraph of section 2, act of March 5th, 1875.

Because—

First. There can be no relief on the bill against the individual defendants, residents of the State, without the presence of the non-resident corporation, the Reading Company.

The actual lessee and recipient of the moneys and property claimed by complainants is the Reading Company. The charge is that the individual defendants have aided and are aiding and abetting the corporation to get possession of this property and these moneys under circumstances which render them personally liable, and the prayer is that they may be decreed to pay, upon failure of the Reading Company to pay. Bill par. 37, p. 20; par. 41, p. 23. They are thus placed in the position of *quasi* sureties. Their liability is conditional upon the previous liability and failure to pay of the Reading Company. Clearly these defendants are entitled to have the Reading Company in Court so that it shall be bound by the adjudication against them.

Story's Eq. Pl. sec. 169.

Second. The case presents but a single controversy, viz, the validity of the lease. According as that shall be determined to be void or voidable, or the contrary, complainants will succeed or fail. It lies at the foundation of any relief whatever.

In case of success on that issue the next matter to be

considered is the nature and extent of the relief they are entitled to. This relief *may* be various. In point of fact, the relief prayed for *is* various, viz. the annulling of the lease; the restoration of the property transferred; an account of moneys received; repayment by the Reading Company, and, on failure of that company, by the individual defendants.

But it is submitted that the mere fact that various items—so to speak—of relief are prayed for does not change the solid single character of the controversy. The various phases of the relief sought are mere adjuncts of the main controversy—the validity of the lease.

Shainwald vs. Lewis, 108 U. S., 158, is in point.

There the single central subject of controversy was the existence or non-existence of the partnership set out in the bill, and that circumstance was held to unify and solidify the controversy, although the case involved several controversies depending upon that. So here the single question and main dispute is the validity of the lease. All the other questions in the case are dependent upon that. The language of the Court, 108 U. S. p. 161, is apposite.

"Neither was there any separable controversy in the "suit such as would entitle any of the parties to a re- "moval under the second clause. As has already been "said, the suit was brought to close up the affairs of an "alleged partnership. The main dispute is about the ex- "istence of the partnership. All the other questions in "the case are dependent upon that. If the partnership "is established, the rights of the defendants are to be "settled in one way; if not, in another. There is no "controversy in the case now which can be separated "from that about the partnership, and fully determined "by itself."

Under the well settled rules of equity procedure the complainants had the right to frame their bill and ask for the relief prayed for. To the bill as framed the Central Company is a necessary party, even if no relief had been prayed against it. No pretence to the contrary was made in the Court below, nor indeed could there be.

Shields vs. Barrow, 17 How. 130.
Ribon vs. Railroad Companies, 16 Wal. 446.

If the various items of relief prayed for are warranted by the facts set out, then the complainants were justified in making parties all who are reached by the decree, although by abandoning or waiving a part of the relief they might have dispensed with some of the parties, and parties brought in merely to be charged are, if shown to be liable under the facts, necessary parties.

Here one of the prayers is that the Central Road may be decreed to re-assume possession and control of the property and to perform its duty as trustee. And another is that the individual defendants shall pay what is found due from the Reading Company, if that company does not.

If the facts lay a proper foundation for this prayer, then the complainants were entitled to insert it, and the individual defendants are necessary parties in the sense in which that word is used in that connection. At least this feature of the case does not increase the number of controversies in the cause.

There being but a single controversy in the cause we find arrayed on one side the complainants, citizens of New Jersey, and on the other side, a corporation and several other citizens of New Jersey. Such a cause cannot be removed.

Removal cases, 10 Otto, p. 457.

Third. The fact, if it be such (which is not admitted), that the foundation of the action is a tort and that all those engaged in it are liable severally, as well as jointly, does not alter the case.

The complainants have seen fit to join all in one suit, and as to the individual defendants it asks a joint decree against all—not several relief against each—and they have joined in their answer.

This feature of the case distinguishes it from some of those cited and relied upon by the other side.

The distinction is between a separate *cause of action*

and a separate or separable *controversy*.

Before suit brought a party against whom a trespass has been committed by several persons has, if he so elect, a separate cause of action against each; or, he has, if he so elect, a single cause of action against all. If he elects to pursue all in one suit and to treat them as joint trespassers and ask one judgment against all jointly, he thereby consolidates his several causes of action into one and presents to the Court a single controversy, not separable.

I adopt the reasoning of Judge Wallace in *Boyd vs. Gill*, 19 Fed. R. 145 at p. 148–9, where he says—

"It does not necessarily follow that a controversy is "wholly between a plaintiff and each one of several de- "fendants, and can be fully determined as between them, "merely because such a controversy might have been "presented if the plaintiff had elected to present it in "that form. The controversy in a suit is the one which "is actually presented, not the one that might have been. "It is not wholly between the plaintiff and one of the "defendants because it might have been if the plaintiff "had so elected. Nor can a controversy be fully deter- "mined between a plaintiff and one of the defendants "when in the form and substance which it has assumed "the plaintiff insists, and has a right to insist, that so far "as he is concerned it shall be determined as to both of "the defendants. The controversy is the claim in form "and substance as it is presented for determination; and "if a joint recovery against several defendants is claimed "upon a cause of action which justifies a joint recovery, "the controversy is between the plaintiff and all the de- "fendants against whom the claim is asserted. The opin- "ions of Judge Johnson in *Peterson v. Chapman* and of "Judge Treat in *Tuedt v. Carson* are replete with satis- "factory reasons against such a construction of the re- "moval act as is insisted upon. There seem to be no "controlling reasons, therefore, for receding from the "former decisions in this circuit."

This reasoning is sustained by the weight of authority. *Peterson vs. Chapman*, 13 Blatch. 395;

Sawyer vs. Switzerland Ins. Co., 14 Blatch. 451;
Tuedt vs. Carson, 13 Fed. R. 353;
Gudger vs. W. N. C. R. R. Co., 21 Fed. R. 81;

Most of the cases relied upon to sustain the contrary contention fail to do so.

Langdon vs. Fogg, 18 Fed. R. 5, was an action to recover against *each individual defendant* the amount of money he had realized from the sale of certain stock—or, as stated on p. 7, "*That they severally account for the "profits received by each from the sale of the capital "stock.*" And the decision of the motion was put on the express ground (p. 9) that "no ground is stated upon "which either one" (of the individual defendants) "could "be held accountable for any profits made by the others."

Sheldon vs. Keokuk, 1 Fed. R. 789,

Was a case of a bill to set aside as fraudulent, as against creditors, two several and disconnected conveyances of property to two different parties, one of whom was a resident and the other a non-resident. Two distinct transactions were brought in question and two distinct issues raised. The bill was demurrable for multifariousness.

Clark vs. R. R. Cos., 11 Fed. Rep. 355,

Was an action of tort for personal injuries against two Railroad Companies. Defendants severed in pleading; one demurred; the other answered, and the demurring defendant being a non-resident removed the cause to the Federal Court, which retained the jurisdiction on the ground that the liability in tort was several as well as joint, and, so far, the decision is adverse to the rulings in the Second Circuit, above cited, and was substantially overruled in the same circuit in

Tuedt vs. Carson, 13 Fed. R. 353, and in the Second Circuit in the later case of

Boyd vs. Gill, 19 Fed. R. 145.

Kerling vs. Cotzhausen, 16 Fed. R. 705,

Was an action of tort against several residents and several non-residents, in which the defendants severed in pleading. The Federal Court retained the cause—not

without hesitation and doubt—on the distinct ground that the *severance in pleading* made several distinct controversies.

The fallacy of this reasoning was fully exposed in *Boyd v. Gill*, supra, and the reasoning of that case was adopted and followed in the 4th Circuit in *Gudger v. W. N. C. R. R. Co.*, 21 Fed. R 81.

In the same direction are

Freidler v. Chotard, 19 Fed. R. 227;

Moore v. North River Con. Co., 19 Fed. R. 803;

Hazard v. Robinson, 21 Fed. R. 193; per Gray J.

Barney v. Latham, 103 U. S., 205;

Hyde v. Ruble, 104 U. S., 407;

Winchester v. Loud, 108 U. S., 130;

Shainwald v. Lewis, 108 U. S. 158.

III.

Does the case show that its determination necessarily involves a question arising under the constitution of the United States?

This question must be determined by an examination of the pleadings. Resort cannot be had in this case for this purpose to the petition for removal. The petition can add to the pleadings only matters of fact, such as citizenship, the amount involved, and the like, and, *perhaps*, where it is presented before answer or plea, the facts intended to be set up in defence. Allegations which amount to mere *inferences* or *conclusions* are of no value.

Gold Washing Co vs Keyes, 96 U. S. 199 at p. 202–3;

Winchester v. Loud, 108 U. S. 130;

Hazard v. Robinson, 21 Fed. R. 193, per Gray J.

In 96 U. S. p. 202, the Chief Justice says: "For the "purposes of a transfer of a cause, the petition for re- "moval, which the statute requires, performs the office of "pleading. Upon its statements in connection with the "other parts of the record the courts must act in de- "claring the law upon the question it presents. It should "therefore, set forth the *essential facts*, not otherwise ap- "pearing in the case, which the law has made conditions

"precedent to the change of jurisdiction. * * The "office of pleading is to state facts, not conclusions of "law. It is the duty of the court to declare the conclu- "sions, and of the parties to state the premises. In this "petition the defendants allege * * that the action "arises under and will necessarily involve and require "construction of the laws of the United States specifi- "cally enumerated. They state no facts to show the right "they claim, or to enable the Court to see whether it *ne- "cessarily depends* upon the construction of the statutes * * Before, therefore, a circuit court can be required "to retain a cause under this jurisdiction, it must in some "form appear upon the record, by a *statement of facts "in legal and logical form, such as is required in good "pleading*, that the suit is one which *really and substan- "tially* involves a dispute or controversy as to a right "which depends upon the construction or effect of the "constitution, or some law or treaty."

It is not enough that the case is one in which it *may be possible* that a question involving the construction of the federal constitution may arise in its progress in such manner that the final judgment rendered in it may be subject to review in this court.

If such were the rule, then almost every case would be subject to removal.

In 96 U. S., at p. 203, the Chief Justice says: "A "cause cannot be removed from a State court simply be- "cause, in the progress of the litigation, it may become "necessary to give a construction to the constitution or "law of the United States. *The decision of the cause "must depend upon that construction.*"

The petition for removal herein contains no pleadable facts (except, of course, those of citizenship) not found in the pleadings—the bill and answer—and being presented after answer should not be referred to on this point. It does indeed set out the act of the legislature of New Jersey relied upon by the defendants, but the courts would take judicial notice of it without pleading it, if it be a *public* act, and if it be a *private* act its absence in the answer deprives the defendants of all benefit from it.

Case, P. 74

The allegation in the petition—case, p. 75, l. 4—relied upon in support of this point—"that said statute, *it is contended by the complainants*, is null and void in that it attempts to alter and amend charters of incorporated companies without the consent of all the stockholders of said companies and is therefore violative of the provisions of the Constitution of the United States that no State shall pass any law impairing the obligation of contracts"—is, at best, but an attempt to forecast what *will be* the contention of the complainants on the hearing of the cause and fails to come up to the standard established by the opinion above recited.

When and where, we ask, have the complainants made any such contention?

The bill of complainant contains no allegation or arguments to warrant it. It is framed upon an entirely different basis. It proceeds upon the ground of *a breach of trust* (Bill par. 29—31) and that the making of the lease and transfer and sale of the property was beyond the power of the corporation without the consent of all the stockholders. It makes no assault on the act set forth in the petition, and nowhere charges any impairment of contract. No contract is set up in the bill except that of the grant of the franchise by the State to the corporation, and that arising by implication from the relations of the stockholders with the corporation.

So far as relates to the grant of the franchise contained in the charter of the company, *that* was made in 1847 (Bill par. 7—9) and, of course, was made subject to the general law of the State enacted in 1846 making all such enactments subject to alteration, suspension and repeal. Rev. of 1877, p. 178, sec. 6. "The charter of any corporation which shall hereafter be granted by or created under any acts of the Legislature shall be subject to alteration, suspension or repeal in the discretion of the Legislature." With this enactment incorporated in and constituting a part of our charter we do not feel much courage in claiming for it the character of an irrepealable contract. Case, p. 43

The allegation of the petition above quoted is of much

less value for the purpose for which it was inserted than was that in *Gold Washing Co. v. Keyes*, which attempted only to forecast what would be the contention of the Petitioners, and did not—as does the petition here— pretend to know and set forth the counsels of the adversary.

But waiving for argument's sake the objection that the petition is defective—

The allegation is that counsel for complainant will contend the act in question—March 11, 1880—to be void because forbidden by the Federal Constitution. This allegation we, in our briefs in the Court below, (that of Mr. Gummere is reprinted for use in this Court) emphatically denied. We traversed that part of the petition and the Court accepted our denial as sufficient (Opinion p. 77, Q. 25-278, Q. 5), and this denial we now and here repeat. We claim and desire no aid whatever from the Federal Constitution, but are entirely content with the protection afforded by the provisions of our own Constitution and the construction put upon it by our own Court of last resort.

Our position as stated in our bill is—briefly—that the corporation has attempted to alien our property without our consent and against our interests and without just compensation, and in so far as its conduct may be attempted to be justified by the legislation in question, that legislation is a violation of Art. 1, par. 16 of our Constitution, viz: "Private property shall not be taken for "public use without just compensation," and

Art. 4, sec. VII par. 8: "Individuals or private cor- "porations shall not be authorized to take private prop- "erty for public use without just compensation."

The corresponding clause in the Federal Constitution applies only to Federal conduct, and not to State Legislation, and hence affords us no protection.

Barron v. Baltimore, 7 Pet. 243.

These clauses in our constitution are quite sufficient for our protection. Case, p. 74

Our contention is that the legislation of 1880, in part recited in the petition for removal, does not authorize any such transfer of property as is set out in the bill.

If we desire to attack it on Constitutional grounds we

shall rely upon Art. 4, sec. 7, par. 4 of our own Constitution which forbids intermingling of legislation upon subjects not cognate. A glance at the whole act, of which the petition recites only a part, makes its vice in this respect apparent.

But if the Court shall be of opinion that a verbal denial is insufficient and the facts well pleaded in the petition must be taken as true, then we fall back on our previous position; we contend that the allegation of the petition above quoted as to the *contention* of the complainants is not well pleaded, and is entirely insufficient to form the foundation of any legal judgment, and that it nowhere appears in the case that the suit "*arises under the Constitution or laws of the United States*," or that its decision will "*necessarily depend*" upon the construction of either, or that "*the suit*" either in whole or in part "*arises out of a* controversy between the parties "in regard to the operation and effect of that constitution "or those laws upon the facts involved.".

The case before the court is clearly distinguished from those relied upon by the other side.

Bridge Pro. v. Hoboken Co., 1 Wal. 116, does not apply.

(1) It was a writ of error to the State court after final judgment there, and the question whether the cause would have been removable under the removal acts was not involved.

(2) The bill set out the two statutes in full and distinctly claimed that the first constituted a contract with the State, and the second impaired its obligations. The complainants bill and whole case rested upon this idea. The complainant's charter having been enacted in the last century was not subject to Sec. 6 of the Corporation Act passed in 1846 and above set out.

Railroad Company vs. Mississippi, 102 U. S. 135.

There the State claimed that the river over which the Railroad Company had built a bridge had been declared a public highway by an Act of Congress, which under

the circumstances, amounted to a contract, and hence the bridge was unlawful. The R. R. Co. justified under a subsequent statute of the United States. Thus both parties put themselves squarely upon Federal legislation.

The State sued in her own Court, and the Railroad Co. invoked the Federal jurisdiction, and this Court held it was right in so doing. But it is to be remarked that it did not put its decision upon the ground that the plaintiff, the State, which resisted the transfer of the cause, relied upon a Federal statue amounting to a contract, but on the other ground—viz: that the defendant who asked the transfer also relied upon a Federal statute.

At pp. 139—140 the Court says: "While the case "raises questions which may involve the construction of "State enactments, and also, perhaps, general principles "of law, not necessarily connected with any Federal ques- "tion, the suit otherwise presents a real and substantial "dispute or controversy which depends altogether upon "the construction and effect of an act of Congress. *If* "*it be insisted that the claim of the State, as set out in* "*its petition, might, possibly, be determined by reference* "*alone to State enactments, and without any construction* "*of the act of 1817, the provisions of which are invoked* "*by the State in support of its application for manda-* "*mus*, the important, and, so far as the defence is con- "cerned, the fundamental, question would still remain, "as to the construction of the act of Congress of March "2, 1868. That act, the Company contends, protects the "present stationary bridge against all interference what- "ever, upon the part either of the State or of the Courts. "In other words, should the Court be of opinion that the "law is for the State, if the rights of parties were tested "simply by the statutes of Alabama and Mississippi, it "could not evade, but must meet and determine, the "question, distinctly raised by the answer, as to the "operation and effect of the act of Congress of 1868"

And the subsequent part of the (prevailing) opinion and the dissenting opinion combine to show that the question in the cause was whether the fact that the *defence* rested upon a Federal statute furnished ground

for Federal jurisdiction.

There was no occasion to decide this question had it been deemed sufficient cause for removal that the plaintiff who resisted removal also rested its case upon a Federal statute. The case, as a whole, is an authority against the appellants herein.

Smith v. Greenhow, 109 U. S. 669.

Here the pleadings plainly showed a case in which the Court must necessarily pass upon the question whether a later statute of the State was invalid as impairing a contract as contained in an earlier one, and the plaintiff, who attacked the later statute on this ground, invoked the aid of the Federal Court. Unlike the complainants herein he was not satisfied with the protection of the State Constitution. His action was, in its inception, but a simple action of trespass, and it was not until the defendant pleaded and the plaintiff replied that the Federal question arose and therein it differed from the Mississippi case.

In *Sawyer v. Concordia*, 12 Fed. R. 754, there were set out in the pleadings two inconsistent statutes of the State, the later repealing the earlier and making a complete case of an act impairing the obligation of a contract, if the first statute was a contract, and the plaintiff in his pleading expressly invoked the aid of the Federal Constitution, and brought his action in the Federal Court.

In *Illinois v. C. B. & Q. R. R. Co.*, 16 Fed. R. 706, the defendant set up a grant by the State in defence to an action by the State founded upon a later statute which, in part, repealed the former grant, and the defendant who removed the cause claimed that the prior grant was protected by the Federal Constitution, making a perfectly plain case of Federal jurisdiction.

So with

The *San Mateo* Case, 13 Fed. R. 145.

The Railroad Co., in the pleadings, put itself squarely

on the 14th amendment to the Federal Constitution, and asked on that ground for the removal of the cause to the Federal Court.

It may be remarked, in closing, that no case has been cited where it has been held that a defendant who, as here, does not for himself invoke the aid of the Federal Constitution against State legislation can remove a cause because the plaintiff suing in a State Court does in fact invoke such aid.

HENRY C. PITNEY.

113-249

Office Supreme Court U. S.
FILED
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CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 878.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY and others,
Appellants,
and
ALFRED MILLS AND ANOTHER, SURVIVING EXECUTORS &c., OF STEPHEN VAIL, deceased,
Appellees.

Reply on behalf of Complainants, Appellees.

I desire to offer to the court a few words in reply to Mr. Gowen's argument; and upon one point only—viz., that there is a question in the cause arising under the Federal constitution.

I.

Conceding, for argument's sake, that Mr. Gowen has succeeded in establishing his position to the full extent claimed by him, what, from his point of view, is the attitude of the parties with respect to that question? Clearly this—complainants attack the lease and ask that it be declared void and have so framed their bill that they can at their option assert that the State legislation authorizing it is void because it impairs the obligations of the contract contained in the charter of the defendant corpora-

tion. This is Mr. Gowen's statement of complainants' position.

It follows that the complainants—and they alone—can invoke the aid of the clause of the Federal constitution forbidding legislation of this character, as a weapon of offense and defense against the State legislation under which the defendants claim to support the lease. The defendants neither do nor can ask any such aid. The bill, so framed, is filed by the complainants in the State court, and the defendants ask its removal to the Federal court.

Now my point is that in such a condition of affairs the Federal court will not listen to a prayer of the defendant to remove the cause. At the very close of my opening brief—p. 16—I challenged the counsel to find a precedent for removal at the instance of the defendant under such circumstances. His great industry has found none.

In *Smith v. Greenhow*, 109 U. S., 609, the plaintiff invoked the aid of the clause of the Federal constitution in question against State legislation set up by the defendant as a defense. But it was the plaintiff and not the defendant who asked to have the cause removed.

The case of *R. R. Co. v. Mississippi*, 102 U. S., 135, cited in my brief—p. 13, bottom, p. 14—is instructive. I submit that the portion of the prevailing opinion italicized on p. 14 is apposite. The complainants contend here that this case *can* be determined—and they desire and intend that it *shall* be determined—without the aid of the Federal constitution, and I submit that it is not competent for the defendants, in the face of complainants' disclaimer, to assert that a Federal question is "*necessarily*" involved.

The question is not whether the complainants have so framed their bill as that they may, at their option, possibly raise a Federal question, but it is whether such question is necessarily involved.

II.

But further.—It clearly appears on the defendants' show that it is entirely in the option of the complainants whether a Federal question shall or shall not be involved in this cause. If complainants do not in point of fact invoke the aid of the clause of the Federal constitution in question against the State legislation relied upon by defendants, then confessedly no Federal question will arise. Now in such case Mr. Gowen in his brief (p. 14 near to top) admits that the cause must under the 5th section of the act of March 3, 1875, be remanded to the State court. That section (18 Stat. at Large, part 3, p. 472) is imperative. Now the complainants have already in the court below, in the printed brief of the counsel and in oral argument, most distinctly disclaimed any aid from the Federal constitution. And the court relied thereon (opinion p. 77, 78).

After that disclaimer the complainants will be estopped from invoking the aid of the Federal constitution against the defendants herein and so that opportunity for raising a Federal question is eliminated. There is no pretense that the case presents any other, and hence it is already within the 5th section of the removal act and must be remanded.

Even if it should proceed in the Federal court and at the hearing complainants should be held, as they must be, to their disclaimer and the court should decree against them on the merits, that decree would be reversed on appeal and the cause be remitted with directions to remand it to the State court.

Hancock v. Holbrook, decided at this term.

III.

Further. I submit that the exposition of complainants' bill made by Mr. Gowen in order to bring complainants into the position above stated is overstrained and cannot be adopted for present purposes. The allegation of the bill (p. 15 of case) quoted by him in his brief

(p. 3), is not that the act of the Legislature in question is void as impairing the obligation of a contract. Nothing of that import is said. The clause (25th) of the bill so quoted is argumentative and does not state facts but positions, and it relates exclusively to supposed acts and doings of the defendant corporation and alleges that certain acts (not enactments) would be unlawful because *inter alia* they would change the contract between the corporation and its stockholders. This is tantamount to saying that they would be unlawful because not warranted by that contract. The bill does not allege that such acts would be void because so changing such contract. The actual allegation, viz., that such acts (not enactments) would be absolutely void by the law of the land, stands by itself and is not stated to be based upon any particular one of the previous members of the sentence.

Taking the whole of the 25th paragraph together, I submit that it is very far beyond the reach of the ruling in *Smith v. Greenhow* invoked by Mr. Gowen on pages 12 and 13 of his brief. To his question—"What inference "can there be except that the validity of the statute is de- "nied and denied for the only plausible reason apparent, "viz., that it violates the contract rights of the complain- "ants"—I answer—a dozen or more reasons are set forth in the very paragraph of the bill above quoted why the lease is void or voidable besides that suggested in the question above quoted. Mr. Gummere in his brief (pp. 1—4) has pointed out several, and I have suggested some on pages 11 and 12 of my brief.

To what is there said I desire to add that the bill was framed in full view of the fact that the charter of the Central R. R. Co. was passed *after* and therefore *subject to* the act of 1846 (see p. 11 of my brief and p. 5, bottom, of Mr. Gowen's brief), which has always been construed as preventing charters thereafter passed, couched in the ordinary verbiage, from being held to create an irrepealable contract. Something more than the ordinary frame-work and language such as that found in the Central R. R. Co.'s charter (case, p. 43 *et seq.*) is required to make such contract. *New Jersey v. Yard*, 95 U. S., 104.

Therefore we framed our bill upon the idea of a *breach of trust* and that the act of the legislature relied upon by the defendant *did not authorize* such a lease as is set forth in the bill and *could not justify* a proceeding which resulted, as we alleged this did, in transferring our property to the Reading R. R. Co. without making us any just compensation therefor.

The defendants fully understood this to be the theory of the bill and framed their answer to meet it; for in dealing with this very 25th paragraph we find it says (p. 65):—

"Defendants deny that any act or thing complained "of by the complainants does take, destroy, endanger or "in anywise injure the property of the Central Railroad "Company of New Jersey, or lessen its value or pro- "ductiveness, as alleged in the twenty-fifth paragraph "of the bill of complaint, but, on the contrary, allege "that the acts and things of which complaint is made "*protect and preserve the trust property from depreciation* and very greatly enhance its value and product- "iveness to the stockholders, who would consider any "interference by the court with the lease as sacrificing "their interests to the comparatively insignificant interest "of the complainants. That as to the other matters "stated in the said twenty-fifth paragraph, they are mat- "ters of law, and, assuming them to be true, *all that the* "*complainants can claim is the value of the stock they* "*represent, and their damages*, taking as a rule or "rules for ascertaining the former the present market "value, and for the damages any reasonable anticipations "of the productiveness of the stock in the future, or by "the adoption of *any rule by which the complainants* "*may obtain the full value of the property which they* "*represent as executors and trustees; the defendants are* "*willing, and hereby profer to pay the complainants* "*for all their stock and for all damages they have sus-* "*tained or can or may sustain by the acts and doings of* "*the defendants* which the bill of complaint is filed to "redress, if, upon the facts of the case, the said complain- "ants have any standing in a court of equity to main-

'tain their bill for relief."

The answer throughout shows that the defendants understood that the real issue to be tried was that tendered by complainants, viz., *breach or no-breach of trust*, and that the ground upon which complainants would attack the lease was not that the legislation behind it was void as impairing the obligation of the contract, but that it did not and could not authorize such a lease without *providing for compensation to dissentient stockholders.*

The idea that the cause involved a Federal question was an afterthought.

Upon the other branch of the case I desire to remind the court simply of the case of *Ayres v. Wiswall*, decided by the court November 10, 1884.

HENRY C. PITNEY.